

Hearing Date and Time: April 10, 2014 at 10:00 a.m. (Eastern Time)  
Objection Deadline: April 3, 2014 at 4:00 p.m. (Eastern Time)

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Jacqueline Marcus

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and Abax Nai Xin Ltd.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re	:	Chapter 11 Case No.
	:	
CHINA NATURAL GAS, INC.,	:	13-10419 (SHL)
	:	
Debtor.	:	
	:	
-----X		

**OBJECTION OF ABAX PETITIONERS TO THIRD MOTION OF  
DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF AN  
ORDER EXTENDING ITS EXCLUSIVE PERIODS TO FILE A  
CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

TO THE HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE:

Abax Lotus Ltd. (“*Abax Lotus*”) and Abax Nai Xin A Ltd. (“*Abax Nai Xin A*,”  
and together with Abax Lotus, the “*Abax Petitioners*”) hereby submit this objection (this  
“*Objection*”) to the third motion of China Natural Gas, Inc., as debtor and debtor in possession in  
the above-captioned chapter 11 case (the “*Debtor*”), seeking an extension of its exclusive periods  
to file a chapter 11 plan (the “*Exclusive Plan Period*”) and to solicit acceptances thereof (the  
“*Exclusive Solicitation Period*,” and together with the Exclusive Plan Period, the “*Exclusive*

*Periods*”) (ECF No. 128) (the “*Third Exclusivity Motion*”<sup>1</sup>), and respectfully represent as follows:

**Objection**

1. At the hearing (the “*Second Exclusivity Hearing*”) held before the Court on February 25, 2014, on the Debtor’s second motion for an extension of its Exclusive Periods (ECF No. 116) (the “*Second Exclusivity Motion*”), counsel for the Debtor identified a number of modest milestones that the Debtor expected to compete during its sixty-day extension period with respect to its ongoing efforts to market and sell its on-shore natural gas operations. In addition to completing and opening a data room, counsel for the Debtor informed the Court that, at the conclusion of its sixty-day extension period, the Debtor expected to have fully marketed the assets for sale, identified a lead bidder, and commenced documenting the proposed transaction. *See* Tr. Second Exclusivity Hr’g, at 22:5-23:7.<sup>2</sup> Specifically, counsel for the Debtor stated:

[T]he objective would be that E&Y would be formally retained, and E&Y will take the next steps to follow up with each of the interested parties and then assemble and complete its data room . . . Within thirty days have, perhaps, indentified [sic], for example, the leading runner on the bids for interest, either investment or sale or otherwise. And that, of course, would mean that in this thirty-day period we would have had working group calls. Abax would have been kept abreast and would be informed about who they are, in fact, and maybe even met with them. In addition to that, once that party was identified, assuming that we’re at the stage, now, where an agreement would begin to take form and documents would have to be drafted. . . .

*Id.* at 22:5-23:2.

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<sup>1</sup> Capitalized terms not otherwise herein defined shall have the meanings ascribed to such terms in the Third Exclusivity Motion.

<sup>2</sup> The relevant portions of the transcript from the Second Exclusivity Hearing are annexed hereto as **Exhibit A**.

2. Unfortunately, the Debtor has (again) wasted its extension and failed to accomplish any of its stated goals. Despite numerous appeals and requests made by the Abax Petitioners, as well as certain of the Debtor's own retained professionals, the Debtor's management has failed to provide Ernst & Young with the financial and other information necessary to populate and open a data room to allow potential investors to commence their due diligence. Even more egregious is management's failure to finalize even a simple form of advertisement to publicize the sale and attract interested parties. This is a far cry from identifying a lead bidder and papering a transaction as Debtor's counsel stated at the Second Exclusivity Hearing. With at least three of the potential investors having executed non-disclosure agreements well over a month ago, management's inability to accomplish even the simplest of administrative tasks is discouraging would-be participants and chilling the sale process before it even commences. Clearly, the Debtor has fallen well short of meeting even the modest expectations of its own retained professionals.

3. As the Court is aware, the Debtor's natural gas assets and operations are held in China by a variable interest entity, or VIE, which has a contractual relationship with a wholly-owned subsidiary of the Debtor, or WFOE. Pursuant to certain operating and consulting agreements, the revenues of the PRC operating assets were to be paid by the VIE to the WFOE and ultimately distributed to the Debtor and used to, among other things, pay down the Senior Notes. The failure of the Debtor's management to enforce the terms of the VIE operating agreements is what precipitated the commencement of this chapter 11 case. The majority of the outstanding equity of the VIE is held by the Debtor's former chairman, Qin'an Ji, and certain other individuals. As these individuals exercise direct control over the Debtor's natural gas

assets and operations, the success of any sale or marketing efforts is contingent upon their cooperation.

4. This is why, at the status conference held before the Court on March 13, 2014 (the “*March 13 Status Conference*”), the Abax Petitioners stated that what was truly critical to see during the extension period was genuine progress and cooperation from the Debtor’s management, because without it any sale process would be fruitless. Specifically, counsel for the Abax Petitioners stated:

What we think really needs to be conveyed to potential purchasers is that the shareholders of the VIE entity, which is where the operating assets are located, are committed to this process and engaged in the process and will act in good faith to market this business. And while there has been this information now conveyed to E&Y and for putting it in the data room ultimately, the concern is that the potential purchasers haven't seen that commitment by the ultimate shareholders of the VIE to cooperate, and without their cooperation this process is futile.

Tr. Mar. 13 Status Conf., at 15:22-16:6.<sup>3</sup> See also Tr. Second Exclusivity Hr’g at 25:7-26:23.

5. The Abax Petitioners believe that the Debtor’s chief restructuring officer and the professionals at Schiff Hardin have genuinely attempted to engage their client and move this case forward. Their efforts, however, have failed thus far to result in any meaningful cooperation from the Debtor’s management. The cooperation and assistance of the Debtor’s management and on-shore shareholders of the VIE is imperative to demonstrate to potential investors that the sale process is legitimate and not simply a rouse orchestrated by management to appease this Court.

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<sup>3</sup> The relevant portions of the transcript from the March 13 Status Conference are annexed hereto as **Exhibit B**.

6. Recognizing the necessity of demonstrating VIE shareholder commitment to the success of the sale process, the Court, at the March 13 Status Conference, ordered the parties in interest to brainstorm possible measures to be put in place to accomplish this goal. *See Id.* at 16:16-21:1. This was ordered by the Court after the Debtor's management failed to provide its professionals with the funds necessary to publish notice of the Bar Date in accordance with a previous order of the Court. In response to that dereliction, the Court warned the Debtor's management that they "can't play fast and loose" with their duties and responsibilities under the Bankruptcy Code. *See Id.* at 5:16-7:10.

7. Thereafter, counsel for the Debtor raised the possibility of the shareholders of the VIE entering into an agreement with the Debtor binding the VIE shareholders to commit to the sale process and cooperate with the Debtor's professionals and any potential investors. It was contemplated that this agreement would be executed by each of the VIE shareholders and would be enforceable in the PRC, which would simultaneously provide the Debtor, specifically the CRO, with a venue to pursue actionable and enforceable remedies directly against the VIE shareholders in the PRC, as well as to demonstrate the commitment of the shareholders to the sale process for the benefit of potential investors. It was also suggested that an in-person meeting between principals of the VIE and the Abax Petitioners may work to help jump-start settlement or sale process discussions. Unfortunately, as of the date of this Objection, neither an in-person meeting nor a cooperation agreement has come to fruition.

8. It is clear based on their lack of action in this case, as well as the Abax Petitioners' entire course of dealing with the Debtor, that the Debtor's management has no intention of proceeding in good faith and is content to continue stonewalling the Abax Petitioners

and the other stakeholders in hopes that the Abax Petitioners will eventually succumb and accept less value than they are entitled to for their Senior Notes and Warrants.

9. Accordingly, for all the reasons set forth in the Abax Petitioners' objection to the Second Exclusivity Motion, a copy of which is annexed hereto as **Exhibit C**, the Third Exclusivity Motion should be denied.

### **Conclusion**

10. For the reasons set forth above, the Abax Petitioners respectfully request that the Court deny the Third Exclusivity Motion.

Dated: April 3, 2014  
New York, New York

/s/ Jacqueline Marcus

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**EXHIBIT A**

**RELEVANT PAGES FROM SECOND EXCLUSIVITY HEARING TRANSCRIPT**

**In Re:**  
*CHINA NATURAL GAS, INC.*  
*Case No. 13-10419-shl*

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*February 25, 2014*

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 13-10419-shl

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In the Matter of:

CHINA NATURAL GAS, INC.,

Debtor.

- - - - -x

United States Bankruptcy Court  
One Bowling Green  
New York, New York

February 25, 2014  
11:15 AM

B E F O R E:  
HON. SEAN H. LANE  
U.S. BANKRUPTCY JUDGE

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Status Conference

Doc #116 Motion to extend exclusivity period for filing a  
Chapter 11 plan and disclosure statement and solicit  
acceptances thereof.

Doc. #117 Application to employ Ernst & Young (China) Advisory  
Limited as restructuring advisor filed.

Transcribed by: Penina Wolicki  
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UNITED STATES DEPARTMENT OF JUSTICE

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BY: GREG M. ZIPES, ESQ.

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BY: MATHEW P. GOREN, ESQ.

1 full answers. And again, there might not be any significant  
2 assets at the end of the day, here. But there are significant  
3 questions at the moment.

4 THE COURT: All right. Thank you.

5 Let me ask what the plan is going forward. Obviously  
6 this is something discussed in agreeing upon the sixty days.  
7 Do you have any -- I won't use the term milestones -- but maybe  
8 it's the best way to characterize it -- that you are looking to  
9 hit in terms of where you expect the case to be in sixty days?

10 MR. DELUCIA: That's a good question Your Honor. I  
11 think in the ideal world, the objective would be that E&Y would  
12 be formally retained, and E&Y will take the next steps to  
13 follow up with each of the interested parties and then assemble  
14 and complete its data room, which we understood from our call  
15 Sunday night, may be a physical data room in Hong Kong,  
16 Shanghai, and Beijing and at E&Y's other offices, where parties  
17 could examine the books and records.

18 Within thirty days have, perhaps, indentified, for  
19 example, the leading runner on the bids for interest, either  
20 investment or sale or otherwise. And that, of course, would  
21 mean that in this thirty-day period we would have had working  
22 group calls. Abax would have been kept abreast and would be  
23 informed about who they are, in fact, and maybe even met with  
24 them.

25 In addition to that, once that party was identified,

1 assuming that we're at the stage, now, where an agreement would  
2 begin to take form and documents would have to be drafted, I  
3 personally don't have enormous hope that we'll have a plan  
4 filed in sixty days. I do believe that probably within sixty  
5 days, because I hope everyone wants this to be well marketed,  
6 that we have an identified purchaser, that we're in the stage  
7 of drafting an agreement or some other form of transaction.

8 THE COURT: You have a proposed transaction.

9 MR. DELUCIA: Correct. And that we're either in  
10 agreement for an additional period for the plan to be filed or  
11 we see that there's no other interested party, at which point  
12 we're in a different picture, and we'll have to assess where we  
13 are.

14 But we certainly -- probably should know within the  
15 next thirty to forty-five days if we are, in fact, going to  
16 have a transaction that is successful with E&Y. That's my gut.

17 THE COURT: All right. Is there any debate,  
18 discussion, disagreement about what a transaction would look  
19 like? I understood Abax's counsel to say -- make reference to  
20 releasing offshore funds. But short of that, what they're  
21 interested in is some sort of transaction to move the case  
22 forward.

23 There are times when people use that as a shorthand,  
24 because everybody knows what a transaction would look like.  
25 Here, given the unusual aspects of the case, I don't know if

1 that -- even the nature of the transaction is -- what kind of  
2 potential variation there might be. Do you have any insight  
3 into that at this time?

4 MR. DELUCIA: Your Honor, I think there's a --  
5 unfortunately, a lot can be read into that comment. But here's  
6 the practical reality. The practical reality is that the  
7 company doesn't have the cash. If it had a fund -- as we  
8 understand it, and based upon the financial records we've  
9 seen -- Mr. Pritchard was just recently there -- I can't see a  
10 source of funds that exists in a particular U.S. offshore PRC  
11 account that has sufficient cash to even make a dent into the  
12 debt.

13 THE COURT: No, I was using that as a prelude --

14 MR. DELUCIA: Okay.

15 THE COURT: -- to my question, which is really  
16 focusing on the transaction -- potential transaction aspect.  
17 When people are talking about it, are they talking about the  
18 same kind of transaction?

19 MR. DELUCIA: Right. I think so, Your Honor. I think  
20 so. I mean, we're -- right now, the transaction that we're  
21 looking at is either a sale or investment. And I think Abax  
22 had proposed a deal prior to the bankruptcy. I'm not sure that  
23 the proposals that we're going to see are going to be very  
24 different than that, or it may actually be a straight-out sale.

25 I don't know that we have full mature terms of a

1 transaction, Your Honor. But I do believe that we're looking  
2 at a transaction that either infuses sufficient cash to take  
3 out debt or a sale of the assets as operating in China.

4 THE COURT: All right.

5 MR. GOREN: Your Honor, if I may just briefly?

6 THE COURT: Sure.

7 MR. GOREN: I don't think we really know yet what the  
8 type of structure would be for a potential sale, and that's for  
9 a variety of reasons. I mean, first and foremost, it would  
10 depend on the purchaser. I mean, we have this VIE WOFE  
11 structure and a lot of that has to do with foreign investment.  
12 If it's a PRC firm that ends up being the winning bidder, that  
13 eliminates a lot of our headaches.

14 Second, with respect to the milestones, I think those  
15 are very -- those are good milestones and very hypothetical.  
16 What Abax is really looking for, though, to see in the next  
17 sixty days, is good-faith real cooperation and progress in this  
18 case. Regardless of identifying a bidder or setting up a data  
19 room, those are great milestones, but that's not what we're  
20 looking for. We're looking to see real progress, real openness  
21 from the debtor's management to be open to the sale process,  
22 which hasn't been the case this far --

23 THE COURT: Is there any particular information that  
24 you're looking for? I know that there was a reference made  
25 early in your remarks as to certain kinds of information you



1 were seeking, financial information. I don't know if that's  
2 going to be subsumed by what E&Y is going to put together or if  
3 there's some things that are standalone and are requested to  
4 give it a sort of a window into possibilities going forward.

5 MR. GOREN: Well, that's a good question, Your Honor.  
6 We have prepared and acted like a committee, in that we  
7 prepared diligence -- our client has prepared diligence  
8 questions. We passed those on to the debtor. And it's my  
9 understanding that Ernst & Young had similar requests, once  
10 they began getting involved in this case. And it's just slow  
11 coming from the debtor. It's typical financial information  
12 that we would need, that any purchaser would need, that E&Y  
13 would need to do this job.

14 THE COURT: But you expect that -- if you're squawking  
15 about information that E&Y will probably be in a similar  
16 position?

17 MR. GOREN: Exactly. It's -- this case comes down to  
18 cooperation from --

19 THE COURT: Management.

20 MR. GOREN: -- the debtor's management. Because no --  
21 there's going to be no sale if they're not cooperating. No  
22 interested party is going to be going to make a real bid  
23 without their cooperation.

24 THE COURT: All right. That's helpful.

25 MR. GOREN: Thank you.

1 MR. DELUCIA: Your Honor, just my final comment. And  
2 I agree with what Mr. Goren just said about the cooperation, I  
3 agree with that.

4 I have here their request for information from Abax.  
5 That was provided on January 14th. It was provided immediately  
6 to the company. The company soon thereafter -- unfortunately,  
7 there is a very -- and candidly, I did not know the depth of  
8 how intense it is -- but there is a New Year in China that is  
9 celebrated for a period of time that spans almost two weeks.  
10 And very little is done in China in that two-week period.

11 So from the -- and that started at the end of January.  
12 So from the end of January through middle of February, there  
13 was a slowdown in China completely across the board.  
14 Everybody. So I think there was a slight delay there in  
15 delivery of that information.

16 He is right that E&Y asked for the same information.  
17 And he's also correct that -- and as Mr. Pritchard advised me,  
18 E&Y has already discussed the provision of the financial  
19 information. We also discussed it Sunday night about that  
20 information coming forward. I think it's critical. I think  
21 Abax will be receiving information. I suggested that we don't  
22 have to wait till one package is delivered. It can come in --

23 THE COURT: No, people always appreciate --

24 MR. DELUCIA: Right.

25 THE COURT: -- getting information when they can get

1 it.

2           Yeah, I think one thing to certainly tell management  
3 is that everyone agrees that E&Y is a valuable step in moving  
4 forward, and that part -- a central part of what needs to be  
5 done for E&Y to function effectively is the information that  
6 they need, which coincidentally turns out to be information  
7 that's being requested by Abax, and that I'm assuming the  
8 protocol will sort of kick in and track that.

9           But certainly management should be aware that  
10 exclusivity can be extended; it can be reduced; it can be  
11 lifted. So a lot is going to depend on how things happen and  
12 move forward in the next sixty days. So I think that it sounds  
13 like the folks -- nobody in this room needs any convincing, but  
14 it sounds like there are people outside of this room that need  
15 convincing.

16           So if there's anything that I can do to help on that  
17 front, and this Court has this tradition of sort of being  
18 creative about solutions and getting people what they need, let  
19 me know, if it's a status conference or something else, because  
20 it sounds like everybody in this room is looking at sort of  
21 rowing in the same direction.

22           MR. DELUCIA: Absolutely, Your Honor. Thank you very  
23 much.

24           THE COURT: All right. And speaking of that, what  
25 makes sense for the next date? And that may be the first of

**EXHIBIT B**

**RELEVANT PAGES FROM MARCH 13 STATUS CONFERENCE TRANSCRIPT**

**In Re:**  
*CHINA NATURAL GAS, INC.*  
*Case No. 13-10419-shl*

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*March 13, 2014*

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 13-10419-shl

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In the Matter of:

CHINA NATURAL GAS, INC.,

Debtor.

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United States Bankruptcy Court

One Bowling Green

New York, New York

March 13, 2014

10:10 AM

B E F O R E:

HON. SEAN H. LANE

U.S. BANKRUPTCY JUDGE

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Doc. #121 Motion to Extend Time for Filing Proofs of Claim  
Modifying Deadline Procedures and Approving Form and Manner of  
Notice Thereof  
  
Status Conference

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ALSO PRESENT

J. GREGG PRITCHARD, CEO, Warren Street Global, Inc.



1 THE COURT: And normally these things are filed before  
2 the bar date passed, before the applicable deadline expires.  
3 So I just -- I need some authority that that isn't a problem.

4 And I did notice that the reason that this date got  
5 missed was because money hadn't been extended to pay for  
6 publication.

7 MR. DELUCIA: Right. Correct.

8 THE COURT: What makes me think we're not going to  
9 have the same problem now?

10 MR. DELUCIA: It was paid. We have the money in hand.

11 THE COURT: All right. Well, what happened the first  
12 time?

13 MR. DELUCIA: The client simply did not fund from  
14 China. We had no -- and it was substantial. It was over  
15 40,000 dollars for the advertisement and --

16 THE COURT: Right. Well, they do realize they're in  
17 bankruptcy, right?

18 MR. DELUCIA: They do, Your Honor.

19 THE COURT: And that if they need any convincing we  
20 can do that. That's, I mean, I'd never heard of that kind of a  
21 situation before. And that doesn't -- I don't know exactly  
22 what it's a sign of in a circumstance -- in a factually unusual  
23 circumstance of a case like this, but whatever it's a sign of,  
24 it's not a good sign of anything.

25 So that's something that needs to be conveyed to the

1 people who hold the purse strings.

2 MR. DELUCIA: Sure.

3 THE COURT: You can't play fast and loose with what  
4 your obligations are. I mean, this is a, frankly, really bad  
5 excuse for extending the bar date. And that needs to be  
6 conveyed to somebody.

7 MR. DELUCIA: It was, Your Honor. And I one hundred  
8 percent agree, and it was conveyed, and it was conveyed with  
9 great vigor that it was unacceptable, and that we'd be in the  
10 position of having to move to extend.

11 On the issue of the authority -- because there is no  
12 other excuse for that. I mean, we do have the money now. We  
13 refused to proceed --

14 THE COURT: No, I appreciate your candor. I don't  
15 want to discourage candor.

16 MR. DELUCIA: No, no. That's reality.

17 THE COURT: So I appreciate the fact that you called  
18 it what it is, and that will serve you well in the course of  
19 the case. But I just -- and I know it's not your call. And I  
20 am sure that any lawyer, including yourself, really does not  
21 want to have that as a problem.

22 MR. DELUCIA: No, Your Honor.

23 THE COURT: So I know I'm preaching to the choir, but  
24 I figured I would join my voice to that chorus and perhaps make  
25 your life easier in such things in the future.

1           So I don't know the exact way to convey that other  
2           than to direct you to convey that, and I don't know who the  
3           person who had the authority and failed to exercise it, but  
4           whoever that is, please deliver that message personally to that  
5           individual.

6           MR. DELUCIA: I will do so, Your Honor. And we've  
7           also, just so Your Honor is aware, we have, in the past, shared  
8           transcripts, which has been helpful.

9           THE COURT: All right. I think that's an excellent  
10          idea here, so I'll direct that as well.

11          MR. DELUCIA: Thank you very much, Your Honor.

12          THE COURT: And the other question I had -- we'll get  
13          back to authority in a second -- is did the original bar date  
14          order require the filing of proof of equity interests?

15          MR. DELUCIA: It did not.

16          THE COURT: It did not. And that's not normally done,  
17          so why is -- I see it's an add-on here, so why is it necessary  
18          at this time?

19          MR. DELUCIA: Well, we are --

20          THE COURT: Like, what's changed?

21          MR. DELUCIA: Nothing materially has changed here,  
22          except we are moving as aggressively as we can towards a  
23          consensual resolution but --

24          THE COURT: I'm not --I'm inclined not to add that.

25          MR. DELUCIA: Okay.

1 the process of what we're trying to explore.

2 THE COURT: All right. All right. Thank you.

3 MR. DELUCIA: Thank you, Your Honor.

4 MS. MARCUS: Good morning, again, Your Honor.

5 Jacqueline Marcus of Weil, Gotshal & Manges. I'd like to  
6 preface my comments by saying whatever I'm about to say is  
7 absolutely no reflection on Mr. DeLucia or Mr. Pritchard. We  
8 believe that they're really doing their best under the  
9 circumstances.

10 And we think it's interesting, Your Honor's concern  
11 about the expenses for publication of the bar date motion  
12 really hit the nail on the head in terms of Abax's concerns  
13 here, because the way the organization of the companies is set  
14 up the debtor here really depends on Chinese entities for its  
15 cash flow and for its decision making, unfortunately.

16 So I can confirm what Mr. DeLucia reported to the  
17 Court about the progress that has been made. From my client's  
18 perspective it's been not fast enough. There's a lot of  
19 information missing, and we'd like the process to be much  
20 further along than it is right now. Again, no criticism to  
21 these gentlemen.

22 What we think really needs to be conveyed to potential  
23 purchasers is that the shareholders of the VIE entity, which is  
24 where the operating assets are located, are committed to this  
25 process and engaged in the process and will act in good faith

1 to market this business. And while there has been this  
2 information now conveyed to E&Y and for putting it in the data  
3 room ultimately, the concern is that the potential purchasers  
4 haven't seen that commitment by the ultimate shareholders of  
5 the VIE to cooperate, and without their cooperation this  
6 process is futile.

7 THE COURT: Right. There was a mention of marketing  
8 material. Is that the vehicle or a vehicle by which that might  
9 be accomplished?

10 MS. MARCUS: I think the answer to that is yes and no.  
11 Yes and no, because yes, of course, the purchasers need to know  
12 the information, and presumably if the access to the  
13 information is provided, that means there is a commitment to  
14 move forward. But it's hard to tell whether that's a sincere  
15 commitment to move forward or just going through the motions.

16 THE COURT: Well, I guess what I mean, and I'm on the  
17 outside looking in, so my comments may be helpful or they may  
18 be completely off base, so I'll trust that you'll both  
19 straighten me out, as the case may be. But if we're talking  
20 about marketing materials, I guess my question is whether the  
21 VIE's embrace of it, in other words, acting as a spokesperson  
22 through the marketing materials and making it very clear that  
23 it's behind the process and advocating the process; having its  
24 name on the materials; being one of, if not the communicator,  
25 one of the communicators of the information, would at least

1 help to hopefully persuade folks that the marketing process for  
2 these assets is a serious one that has the full backing of the  
3 relevant parties, who need to back it or it's not going to  
4 work.

5 MS. MARCUS: Right. I think that's right. I think  
6 that would help. And I haven't seen the marketing materials,  
7 so I don't know whether or not that's the case. That and  
8 information about whether there are legal opinions that exist  
9 in China regarding the VIE structure and its enforceability in  
10 those kinds of issues, I think, would help give credence to the  
11 process.

12 THE COURT: All right. All right. So really what  
13 you're looking for is any tangible signs to parties-of-interest  
14 that the VIE is behind this process as well as acting promptly  
15 and thoroughly to convey all the things that you would expect  
16 an entity who wants to sell their assets would do: financial  
17 information, legal opinions, transparency, so folks who are  
18 interested know as much as they can know.

19 MS. MARCUS: That's exactly right.

20 THE COURT: As opposed to getting, sort of, mixed  
21 messages. You want to sell it, but we don't have this  
22 information or that information.

23 MS. MARCUS: That's correct, Your Honor.

24 THE COURT: All right. All that seems fair.  
25 Certainly the more concrete -- it sounds like you haven't seen

1 the marketing materials, although it sounds like you have a  
2 pretty good idea of what information, from your perspective, is  
3 missing. Obviously the more concrete and specific your  
4 suggestions are, the better for counsel and the debtor, and  
5 certainly the easier it is for me to put my weight behind them,  
6 to the extent that that's appropriate.

7 MS. MARCUS: Thank you, Your Honor.

8 THE COURT: Thank you.

9 MR. DELUCIA: Thank you, Your Honor. I just want to  
10 add to the record, and perhaps provide counsel with further  
11 assurances of an understanding, and that is the VIE is an  
12 entity. China Natural Gas is an entity. But the VIE is  
13 controlled by a select set of individuals. What Your Honor,  
14 new to the case, may not know is that Abax's principal, Mr.  
15 Yang, was a member of our board of directors and was once very  
16 familiar with the company. And why I say that is because that  
17 means he is keenly aware of who really controls the VIE in  
18 China. And his concern is that those people who control the  
19 entity, the VIE, in China are behind the process.

20 I am very aware of his concern, very aware of  
21 counsel's concern, and what I'm trying to say is I completely  
22 understand that these individuals have to be behind it,  
23 otherwise it won't happen. And I am committed to making sure  
24 that we do not waste this Court's or their time with false  
25 promises, that if there is going to be a backing, which they

1 have represented to us they will support this process, have  
2 paid E&Y their engagement fee, have committed to pay them a  
3 commission on an upside of the sale of the assets in China,  
4 which include the VIE, that they have committed to us that  
5 they're behind the process. But I am keenly aware of their  
6 concern and will make sure that those individuals -- not just  
7 some representative at a lower level of the VIE says we're  
8 prepared to share information, but the individuals who make the  
9 decisions at the VIE are behind it.

10 THE COURT: All right. What's the best way to do  
11 that? You may or may not have an answer to that now, and it  
12 may be that we have another status conference once you get  
13 further along in the marketing materials and can address  
14 information that everyone agrees is not available or in the  
15 data room.

16 But I'm not familiar with Chinese government protocol  
17 and to have any sense of what's in the realm of the possible,  
18 what's in the realm of the possible but highly unlikely, and  
19 also what's in the realm of this is how it's usually done, and  
20 therefore, this usual method of conveying assent, support is  
21 what everyone in the relevant community will recognize as being  
22 such. And I have to rely on all of you to do that. It sounds  
23 like we may be a little -- maybe another status conference away  
24 from that -- but we're certainly not far away from that. So I  
25 would ask parties to think and brainstorm about what -- I mean,



1 you all have the folks who are insiders, not in the bankruptcy  
2 sense, but in the know as to what can be done here and should  
3 be done here. So I'd ask that you really start maybe putting  
4 together -- Abax can put together a list of here's what we  
5 think is possible and a good idea, and you can do the same, and  
6 we can work off those suggestions.

7 MR. DELUCIA: Yes. I mean, I do have an idea, and  
8 it's not one that without vetting it through counsel as being  
9 acceptable would I waste the Court's time on it. But as we're  
10 speaking, and as Your Honor is sharing the Court's concerns, I  
11 am coming up with some ideas. And I think that maybe counsel  
12 and I could speak right after this with one way of making that  
13 commitment by management of the VIE palpable.

14 THE COURT: All right. No, I got the sense that now  
15 is not the right time to --

16 MR. DELUCIA: Sure.

17 THE COURT: -- discuss it in open court in a, sort of,  
18 brainstorming way, that it doesn't seem like it's that kind of  
19 process.

20 MR. DELUCIA: Right.

21 THE COURT: But I would think that maybe at the next  
22 status conference, putting something on the record would be, at  
23 that point, helpful, so I encourage folks to have conversations  
24 with that goal in mind so that we know the process can work and  
25 can be as robust as possible, and everybody will also perceive

1 it that way.

2 MR. DELUCIA: Very good. Thank you, Your Honor.

3 THE COURT: And you're certainly happy to hang around  
4 the courtroom. I have an 11 o'clock, but it's on the  
5 telephone, so I don't need the courtroom. And so if I can be of  
6 use to you, by all means.

7 MR. DELUCIA: Thank you so much, Your Honor.

8 THE COURT: All right. Do we have another date?

9 MR. DELUCIA: I don't think we do, Your Honor. We do  
10 not.

11 THE COURT: All right. So I would guess thirty days  
12 out would make sense.

13 MR. DELUCIA: It would, Your Honor.

14 THE COURT: All right.

15 MS. MARCUS: Your Honor, Mr. DeLucia mentioned with  
16 exclusivity --

17 MR. DELUCIA: Oh, that's true.

18 MS. MARCUS: --expiring he may want a hearing before  
19 that or around that time.

20 THE COURT: Fair enough.

21 MS. MARCUS: Or at least a bridge order.

22 MR. DELUCIA: That's correct, Your Honor.

23 THE COURT: A very good observation. Obviously if you  
24 file the motion before the deadline expires --

25 MR. DELUCIA: Yes.

**EXHIBIT C**

**ABAX PETITIONERS' OBJECTION TO SECOND EXCLUSIVITY MOTION**

HEARING DATE AND TIME: February 25, 2014 at 11:00 a.m. (Eastern Time)  
OBJECTION DEADLINE: February 18, 2014 at 4:00 p.m. (Eastern Time)

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and Abax Nai Xin Ltd.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re	:	Chapter 11 Case No.
	:	
CHINA NATURAL GAS, INC.,	:	13-10419 (SHL)
	:	
Debtor.	:	
	:	
-----X	:	

**OBJECTION OF ABAX PETITIONERS TO MOTION OF DEBTOR AND DEBTOR IN  
POSSESSION FOR ENTRY OF AN ORDER FURTHER EXTENDING ITS EXCLUSIVE  
PERIODS TO FILE A CHAPTER 11 PLAN AND SOLICIT ACCEPTANCES THEREOF**

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TO THE HONORABLE SEAN H. LANE,  
UNITED STATES BANKRUPTCY JUDGE:

Abax Lotus Ltd. (“*Abax Lotus*”) and Abax Nai Xin A Ltd. (“*Abax Nai Xin A*,” and together with Abax Lotus, the “*Abax Petitioners*”) hereby submit this objection (this “*Objection*”) to the motion of China Natural Gas, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (the “*Debtor*”), seeking a further extension of its exclusive periods to file a chapter 11 plan (the “*Exclusive Plan Period*”) and to solicit acceptances thereof (the “*Exclusive Solicitation Period*,” and together with the Exclusive Plan Period, the “*Exclusive Periods*”) (ECF No. 116) (the “*Second Exclusivity Motion*”<sup>1</sup>), and respectfully represent as follows:

**Preliminary Statement**

1. The Abax Petitioners are pleased that the Debtor has recently received some initial indications of interest from third parties that may be interested in pursuing a strategic transaction to maximize value for creditors and other parties in interest. However, given the Debtor’s lack of progress thus far in its chapter 11 case, the Abax Petitioners, as the Debtor’s largest creditors, are greatly concerned that the Debtor will fail to take swift and meaningful action to pursue these interested parties should the Court grant the Debtor’s request for another ninety-day (90) extension of the Exclusive Periods. Based on the length of time it has taken to reach this juncture, the Abax Petitioners believe that any further extension of the Exclusive Periods should be limited, in order to insure that the Debtor and its management do not waste this opportunity.

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<sup>1</sup> Capitalized terms not otherwise herein defined shall have the meanings ascribed to such terms in the Second Exclusivity Motion.



2. At the hearing held before the Court on November 13, 2013 (the “**November 13 Hearing**”) on the Debtor’s first request for an extension of its Exclusive Periods (ECF No. 90) (the “**First Exclusivity Motion**”), Judge Peck, recognizing a lack of cooperation and progress to date on the part of the Debtor, warned Debtor’s counsel that there would be consequences should the Debtor fail to demonstrate substantial progress and an increased level of cooperation going forward in its chapter 11 case. Not only did Judge Peck caution the Debtor that there would likely be no further extensions of exclusivity, but he went further and stated that he would consider reducing the extension that was previously granted if the Debtor delayed in filing a joint protocol to govern an agreed approach between the Debtor and the Abax Petitioners in dealing with potential restructuring transactions (the “**Cooperation Protocol**”). Trans. Nov. 13 Hearing, at 28:17-19.

3. Specifically, when Judge Peck announced his decision at the November 13 Hearing, he began by stating “I’m going to extend exclusivity for ninety days. ***The burden to get another extension will be almost insurmountable.***” *Id.* at 27:25 (emphasis added). Judge Peck then reiterated his point, warning Debtor’s counsel that “[Y]our clients need to understand that they’re going to be held on a tight leash here and that ninety days is not an introduction into another ninety days. ***This is their last opportunity to get this done or I will open up exclusivity.***” *Id.* at 31:11-15 (emphasis added).

4. To further emphasize the importance of the Debtor actively engaging with the Abax Petitioners, the Court cautioned Debtor’s counsel that “I expect you guys to work together. I expect you guys to treat each other as you would if Abax were running a creditors’ committee and you’re running a debtor that needs the cooperation of the creditors’ committee to

get a plan done on a consensual basis.” *Id.* at 29:25-30:4. A copy of the transcript from the November 13 Hearing is annexed hereto as **Exhibit A**.

5. As the Debtor’s largest creditors, the Abax Petitioners have no intention of disrupting any sale or marketing process that the Debtor and its management pursue in good faith. However, to date, the Debtor has not made progress in pursuing these transactions or advancing its chapter 11 case that would warrant a further ninety-day extension of the Exclusive Periods. To wit, to the best of the Abax Petitioners’ knowledge, the Debtor has not even entered into a confidentiality agreement with any of the interested parties.

6. Nearly every issue or event cited by the Debtor in support of the Second Exclusivity Motion was completed *months* before the Debtor even filed its First Exclusivity Motion. Court approval of the SEC settlement, identifying and retaining a chief restructuring officer, the filing of its Schedules and SOFAs, the filing of a motion to establish a claims bare date – these were the very same accomplishments touted by the Debtor in its First Exclusivity Motion. *See* First Excl. Mot., at ¶¶10, 17. Moreover, despite statements by the Debtor in its motion suggesting that it has exchanged debt repayment proposals with its principal creditors, the Abax Petitioners are not aware of single restructuring proposal having been exchanged by the Debtor since early November, prior to the November 13 Hearing.

7. The Debtor has simply not moved with enough purpose or expediency to warrant a further ninety-day extension. Despite the Court’s warning, it took the Debtor until December 18 – approximately thirty-five (35) days after the November 13 Hearing – to actually file the Cooperation Protocol. And, although the Cooperation Protocol was designed to, among other things, set up Working Group calls, those calls have been few and far between. Even more disappointing to the Abax Petitioners has been the unwillingness of the Debtor’s management to

discuss anything of substance on those calls until after the retention of Ernst & Young has been finalized – a process that has yet to be accomplished despite (a) the United States Trustee having set a deadline of January 7 for the Debtor to retain a financial advisor and (b) the Debtor having been in chapter 11 *for over a year*. The Debtor blames its lack of progress, in part, on the recent Chinese New Year but that cannot explain away the lack of progress that has been made during the entirety of its ninety-day extension period.

8. Given the lack of meaningful progress in what should otherwise be a manageable and straightforward chapter 11 case, there is little justification for granting the Debtor a further extension of its Exclusive Periods. Should the Court determine that an extension of exclusivity is warranted, a more limited extension of exclusivity, such as 45- or 60-days, would be more appropriate to insure that the Debtor's management takes advantage of this limited window of opportunity to pursue interested parties in hopes of achieving a transaction that maximizes value for the estate and all parties in interest.

### **Background**

#### **A. General Background and Events Leading to the Commencement of the Chapter 11 Case**

##### **a. Corporate Structure**

9. As discussed below, although the Debtor is a Delaware corporation, its natural gas operations are held by its foreign subsidiary, Xi'an Xilan Natural Gas Company Ltd. ("*Xi'an Xilan*"), which was formed as a variable interest entity, or VIE, in the People's Republic of China ("*PRC*"). *See Declaration of Adam P. Stochak*, dated March 20, 2013 (ECF No. 20), Ex. F. at 2.

10. PRC law imposes restrictions on direct foreign ownership of certain business enterprises, particularly in regulated industries, and a VIE structure is often utilized to

conform to these restrictions. In particular, when PRC entities seek capital abroad (for example, by listing on a U.S.-based stock exchange), a foreign entity will be incorporated for purposes of the listing and the listed foreign entity will form a wholly foreign owned enterprise, or WFOE, in the PRC. WFOEs, as distinguished from other PRC business entities, are permitted by PRC law to be wholly owned by foreign entities without the participation of PRC investors. The WFOE will then enter into contractual arrangements with a VIE that holds the operating assets in the PRC to ensure that the revenues of the PRC operating assets are paid by the VIE to the WFOE and may ultimately be distributed to the listed foreign entity. The VIE that holds the operating assets in the PRC is, in turn, often owned by the management of the listed foreign entity and their affiliates.

11. On February 21, 2006, the Debtor formed Shaanxi Xilan Natural Gas Equipment Co., Ltd. (“*Shaanxi*”), a Chinese limited liability company, as a WFOE. As such, Shaanxi does not directly invest in regulated businesses in the PRC. Instead, it has two key contracts with Xi’an Xilan, which directly or indirectly holds the Debtor’s operating assets in the PRC.<sup>2</sup> *Id.* at 5. Pursuant to a consulting services agreement, Shaanxi provides consulting, human resources, and other services to Xi’an Xilan in exchange for quarterly payments of all of Xi’an Xilan’s revenues. Further, pursuant to an operating agreement, Shaanxi acts as a guarantor of Xi’an Xilan’s obligations to third parties, and as a counter-guarantee Xi’an Xilan has pledged all its assets to Shaanxi and undertaken not to transfer those assets. The operating agreement also gives Shaanxi the right to substantially influence Xi’an Xilan’s daily operations and financial affairs, appoint senior executives, and approval all matters requiring shareholder approval. *Id.* at 6-7. While the Debtor has not publicly disclosed the identity of all owners of

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<sup>2</sup> Only a portion of the assets used in the Debtor’s PRC operations are subject to regulations restricting foreign ownership. Nevertheless, most of these assets are held by Xi’an Xilan, the VIE.

Xi'an Xilan, the Debtor has filed agreements with the SEC indicating that, as of March 2006, the Debtor's former Chairman, Qinan Ji, and certain other individuals held a majority of the equity interests of Xi'an Xilan and agreed not to transfer such interests. Consequently, it appears that the Debtor's former Chairman is among the individuals that currently control Xi'an Xilan.

**b. The Senior Notes**

12. On January 29, 2008, pursuant to that certain securities purchase agreement between the Debtor and Abax Lotus dated December 30, 2007 (the "**Purchase Agreement**") and the 5.0% Guaranteed Senior Notes due in 2014 (the "**Senior Notes**") issued pursuant to that certain indenture dated January 29, 2008 (the "**Indenture**") between the Debtor and DB Trustees (Hong Kong) Limited, as trustee (the "**Trustee**"), the Debtor sold Senior Notes to the Abax Petitioners in the principal amount of \$20,000,000, and warrants to purchase 2,900,000 shares of the Debtor's common stock (the "**Warrants**"). On March 3, 2008, the Debtor issued to the Abax Petitioners an additional \$20,000,000 in principal amount of Senior Notes. The Senior Notes are denominated in renminbi ("**RMB**"), the currency of the People's Republic of China ("**PRC**"), but are payable in U.S. dollars. As of February 8, 2013, the Debtor owed approximately \$40.4 million to the Abax Petitioners on account of the Senior Notes. A detailed description of the amounts owed by the Debtor to the Abax Petitioners on account of the Senior Notes and Warrants is set forth in the proofs of claim (Claim Nos. 6-10) (the "**Abax Proofs of Claims**") timely filed by the Abax Petitioners in accordance with the Court's order, dated November 25, 2013, establishing deadlines for filing proofs of claim and related procedures (ECF No. 165) (the "**Bar Date Order**"). Copies of the Purchase Agreement and the Indenture are annexed as exhibits to the Abax Proofs of Claim.

13. The Senior Notes are secured by a pledge of the Debtor's equity interest in the WFOE, Shaanxi, representing 65% of the outstanding equity interests of Shaanxi.<sup>3</sup> This security interest was memorialized in that certain Onshore Share Pledge Agreement (the "***Pledge Agreement***"), dated January 29, 2008, executed between the Debtor and the Trustee.

**c. The Debtor's Continuing Failure to Service the Senior Notes**

14. In August 2009, the Debtor required a waiver from the holders of the Senior Notes due to its failure to have its stock listed on an exchange by the deadline required in the Indenture, as extended by conditional waiver obtained by the Trustee. The Debtor sought and obtained a waiver from each holder of the Senior Notes at that time: Abax Jade, Abax Nai Xin A and Lake Street LP ("***Lake Street***"), an unrelated investment fund.

15. In the fall of 2010, the holders of the Senior Notes and the Debtor negotiated and executed two restructuring agreements to amend the terms and conditions of the Senior Notes and Warrants. On September 7, 2010, each of the then-holders of the Senior Notes executed a Restructuring Agreement with the Debtor (the "***September 2010 Restructuring Agreement***"). The September 2010 Restructuring Agreement (a) provided that the Debtor would pay certain amounts on the Senior Notes on or before October 6, 2010 and October 13, 2010; and (b) amended the Senior Notes and the Indenture to change the stated maturity date from January 30, 2014 to August 30, 2011, with the full and final payment of all interest, principal and premium due on August 30, 2011.

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<sup>3</sup> Pursuant to Section 4(a) of the Pledge Agreement, the Debtor was required to submit, within ten (10) days of the execution of the Pledge Agreement, all required documents to the Ministry of Commerce of the PRC (the "***MOC***"), whose approval is required to render the Pledge Agreement enforceable. Additionally, within five (5) days of approval by the MOC, the Debtor was required to register the Pledge Agreement and the collateral described therein with the State Administration of Industry and Commerce of the PRC (the "***SAIC***"). The Abax Petitioners do not know whether the Debtor made the required submission and received the approval of the MOC or whether the Debtor registered the Pledge Agreement and the collateral described therein with the SAIC.

16. After the Debtor failed to abide by any of the terms of the September 2010 Restructuring Agreement, on November 12, 2010, each of the then-holders of the Senior Notes once again executed a revised Restructuring Agreement with the Debtor (the “**November 2010 Restructuring Agreement**”). The November 2010 Restructuring Agreement (a) provided that the Debtor would pay approximately \$18 million on the Senior Notes on or before November 30, 2010; and (b) amended the Senior Notes and the Indenture to change the stated maturity date from January 30, 2014 to August 30, 2011, with the full and final payment of all interest, principal and premium due on August 30, 2011. Like the September 2010 Restructuring Agreement, the Debtor never abided by any of the terms of the November 2010 Restructuring Agreement and did not make the November 30, 2010 payment. Copies of the September 2010 Restructuring Agreement and the November 2010 Restructuring Agreement are also attached as exhibits to the Abax Proofs of Claim.

17. On January 30, 2012, the Debtor failed to timely pay certain obligations under the terms of the Indenture (the “**January 2012 Obligations**”) thereby triggering the accrual of default interest and allowing the noteholders to declare an event of default under the Indenture. The Debtor sought and obtained a waiver, executed March 17, 2012, by all holders of the Senior Notes, waiving the events of default caused by its failure to timely pay the January Obligations and related default interest.

**d. The Current Undisputed and Unresolved Defaults**

18. The Indenture required the Debtor to make six semi-annual repayments of principal beginning in July 2012 (8.3333% of outstanding principal for the first two repayments, 16.6667% for the next two, and 25% each for the last two). The Debtor failed to make the repayment due July 30, 2012, and has not paid interest on the Senior Notes since then.

19. On August 21, 2012, Abax Global Capital (“**Abax Global**”), as investment manager to the Abax Petitioners, sent the Debtor a formal notice of default (the “**Default Notice**”) and demanded that the Debtor make the July 2012 principal and interest payments and remedy the default. The Debtor did not respond to the Default Notice.

20. On September 5, 2013, Abax Global provided notice of acceleration of the principal amount of the Senior Notes, together with all accrued and unpaid interest and premium, which was immediately due and payable under the Indenture (the “**Acceleration Notice**”). The Debtor also failed to respond to the Acceleration Notice.

21. On September 10, 2012, Abax Global provided the Debtor with a final demand for payment (the “**Demand Letter**”). The Demand Letter expressly notified the Debtor that the commencement of an involuntary bankruptcy was one of the remedies the Abax Petitioners might pursue if the company did not remedy the default. The Debtor did not put forward any plan to remedy the defaults or repay the Senior Notes in response to the Demand Letter.<sup>4</sup>

22. For several months, the Abax Petitioners sought a consensual resolution of the defaults, but the Debtor rejected or failed to act on Abax Global’s proposals for repayment of the Senior Notes. The Debtor’s board of directors met in late-January 2013, before the last Chinese New Year holiday, to discuss the settlement of the pending SEC regulatory action against the company. The Abax Petitioners made a final attempt at a negotiated resolution of the outstanding default around the same time. Thereafter, when the Debtor failed to make any

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<sup>4</sup> Copies of the Default Notice, the Acceleration Notice and the Demand Letter are annexed as exhibits to the Declaration of Xiang Dong Yang In Support of Opposition of the Abax Petitioners to the Debtor’s Motion to Dismiss dated June 6, 2013 (ECF No. 31).



payment on the Senior Notes, the Abax Petitioners, together with Lake Street, filed the involuntary petition.

**B. Procedural Background**

23. On February 8, 2013 (the “*Petition Date*”), the Abax Petitioners, together with Lake Street, filed an involuntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) against the Debtor.

24. On June 26, 2013, the Debtor consented to entry of an order for relief, which the Court entered on July 9, 2013 (ECF No. 38) (the “*Order for Relief*”). The Debtor is operating its business and managing its property as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Abax Petitioners have refrained thus far from requesting the appointment of a trustee or examiner.

25. Nearly four months after the Debtor consented to the entry of the Order for Relief and nearly eight months after the Petition Date, the Debtors sought Court approval for the retention of Schiff Hardin LLP as its counsel and J. Gregg Pritchard as its chief restructuring officer. The Abax Petitioners filed a limited objection to those retentions (ECF No. 80) raising concerns that the Debtor’s professionals would be unable to effectively act as fiduciaries in light of the fact that the Debtor’s management was running a profitable business in China but ignoring its obligations to creditors and other constituents of the Debtor. The Court approved the Debtor’s proposed retentions on October 23, 2013.<sup>5</sup>

26. On October 30, 2013, the Debtor filed its First Exclusivity Motion seeking a ninety-day extension of the Exclusive Periods. In response, the Abax Petitioners filed an

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<sup>5</sup> See Order Authorizing Employment and Retention of Schiff Hardin LLP as Counsel for the Debtor *Nunc Pro Tunc* as of July 9, 2013, dated October 23, 2013 (ECF No. 86) and Order Authorizing Employment of Warren Street Global, Inc. and Designation of J. Gregg Pritchard as Chief Restructuring Officer of the Debtor *Nunc Pro Tunc* as of August 28, 2013, dated October 23, 2013 (ECF No. 87).

objection to that motion arguing that, in light of the Debtor's lack of progress in the chapter 11 case, the circumstances did not warrant an extension of the Exclusive Periods (ECF No. 93). As set forth above, at the November 13 Hearing, the Court granted the First Exclusivity Motion but cautioned the Debtor that, unless significant signs of progress and cooperation on the part of the Debtor were forthcoming, this would be the Debtor's only extension. On November 20, 2013, the Court entered an order (the "***First Exclusivity Extension Order***") extending the Exclusive Plan Period and Exclusive Solicitation Period for ninety days to February 4 and April 27, 2014, respectively (ECF No. 102).

27. On February 3, 2014, the Debtor filed the Second Exclusivity Motion seeking a second ninety-day extension of the Exclusive Periods to May 5 and July 7, 2014, respectively.

**There Is No Basis for a Further Ninety-Day  
Extension of the Debtor's Exclusive Periods**

28. A chapter 11 debtor has the exclusive right to file a plan and solicit acceptances thereof for 120 days and 180 days, respectively. *See* 11 U.S.C. §§ 1121(b), (c). A court's decision to extend exclusivity is a "serious matter" and "extensions are not granted routinely or cavalierly." *In re Borders Group, Inc.*, 460 B.R. 818, 821 (Bankr. S.D.N.Y. 2011); *see also In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *In re All Season Indus., Inc.*, 121 B.R. 1002, 1004 (Bankr. W.D. Ind. 1990).

29. The debtor may extend its exclusive periods only upon a showing of "cause." 11 U.S.C. § 1121(d); *see also In re S.W. Oil Co. of Jourdanton, Inc.*, 84 B.R. 448, 450 (Bankr. W.D. Tex. 1987) ("A court considering a motion to extend the 120-day period, during which the debtor has an exclusive right to file a plan of reorganization, should not routinely grant an extension. It should act only where cause is shown."). Section 1121(d) of the Bankruptcy

Code does not define “cause.” Accordingly, courts have developed a multi-factor balancing test to aid in determining whether “cause” exists to extend the debtor’s exclusive periods. *See In re Adelphia Commc’ns Corp.*, 352 B.R. 578, 587 (Bankr. S.D.N.Y. 2006) (enumerating the factors of the test); *In re R.G. Pharmacy, Inc.*, 374 B.R. 484, 487 (Bankr. D. Conn. 2007) (adopting the same multi-factor test). The factors courts consider are the following:

- (a) The size and complexity of the debtor’s case;
- (b) the existence of good faith progress towards developing a plan of reorganization;
- (c) a finding that the debtor is not seeking to extend exclusivity to pressure creditors to accede to the debtor’s reorganization demands;
- (d) the existence of an unresolved contingency;
- (e) the fact that the debtor is paying its bills as they come due;
- (f) the necessity for sufficient time to permit the debtor to negotiate a plan of reorganization and prepare adequate information;
- (g) whether the debtor has demonstrated reasonable prospects for filing a viable plan;
- (h) whether the debtor has made progress in negotiations with its creditors; and
- (i) the amount of time which has elapsed in the case.

*Id.*

30. Further, the burden of extending exclusive periods rests with the debtor, which “must make a clear showing of ‘cause’ to support an extension.” *Curry Corp.*, 148 B.R. 754, 756 (Bankr. S.D.N.Y. 1992); *see also S.W. Oil Co.*, 84 B.R. at 450 (“A debtor seeking to extend the 120-day exclusivity period bears the burden of proof and must show that cause exists for granting an extension.”).

31. The Debtor here has made no showing to warrant a further ninety-day extension of the Exclusive Periods.

**A. The Debtor Has Not Made Any Meaningful Progress in its Chapter 11 Case or Progress in Negotiating with Creditors to Justify a Further Ninety-Day Extension of the Exclusive Periods**

32. The Debtor and its professionals have not made meaningful progress in this chapter 11 case since the First Exclusivity Extension Order. *See* Sec. Excl. Mot., at ¶ 20. The Debtor overstates the progress it has made in this case and the matters it cites as a basis for requesting an extension (settling the SEC Action, filing its Schedules and SOFAs, and retaining a chief restructuring officer) are minimal administrative tasks that were accomplished well before the Debtor filed its First Exclusivity Motion.

33. Courts have previously held that it is the Debtor's burden to demonstrate some promise of probable success in formulating a plan of reorganization to warrant an extension of the Exclusive Periods. *See In re Pine Run Trust, Inc.*, 67 B.R. 432, 435 (Bankr. E.D. Pa. 1986) ("Some promise of probable success in formulating a plan of reorganization, if the debtor is provided additional time, has been recognized as an element of cause for an extension of the exclusivity period."). A reasonable probability "cannot be grounded solely on speculation." *In re Craghead*, 57 B.R. 366, 370 (W.D. Mo. 1985); *see also S.W. Oil Co.*, 84 B.R. at 451 (noting that in virtually every case where an extension has been granted, the debtor has shown that "substantial progress has been made in formulating a plan during the first 120 days").

34. The Debtor has been in chapter 11 for over a year now, with very little to show for it. The settlement of the SEC Action was agreed in principle before commencement of the chapter 11 case in early 2013, finalized in early June prior to the entry of the Order for Relief, and approved by this Court at a hearing in early August. Thus, the entire matter was fully

resolved at least 90 days before the expiration of the initial Exclusive Period. Since that time, the Debtor has retained counsel, employed a chief restructuring officer, filed its limited Schedules and SOFAs (after three extensions), established a claims bar date and filed a retention application for Ernst & Young. These are straightforward administrative tasks and do not explain why the Debtor has been unable to make significant progress on a chapter 11 plan. Even more discouraging is that the Debtor's management appears to be using the fact that it has delayed in retaining a financial advisor for over a year as a justification both for refusing to engage in serious and substantive restructuring discussions and for extending its Exclusive Periods.

35. The Abax Petitioners are concerned that the Debtor is seeking to delay this case even further and maintain the exclusive right to propose a plan for another three months so it can use that time to bolster its litigation position and develop expert testimony in support of a low valuation that will minimize recoveries for creditors of the Debtor and maximize the value retained by management and owners of the VIE operating companies in China.

36. The Debtor has not made any meaningful proposal to the Abax Petitioners on a workable construct for a chapter 11 plan of reorganization and, given the history of delay that has been employed by the Debtor's management, there is little reason to believe that a viable proposal on a consensual plan of reorganization is forthcoming.

37. Nor has the Debtor shared any meaningful financial information with the Abax Petitioners. Since the parties entered into the Cooperation Protocol, the only piece of financial information that the Debtor has shared with the Abax Petitioners is a three page six-month cash flow projection. On January 14, 2014, the Abax Petitioners sent the Debtor a number of due diligence items and follow-up questions with respect to those cash flow

projections. However, despite numerous requests, the Debtor has still not replied to a single one of those diligence items. This hardly seems like the level of participation and cooperation that a debtor would bestow on a creditor committee as the Court instructed at the November 13 Hearing.

38. Courts previously have declined to extend exclusive periods where a debtor has failed to make any meaningful progress towards promulgating a chapter 11 plan. *See, e.g., All Seasons Indus., Inc.*, 121 B.R. at 1005-06 (declining to extend debtor's exclusive periods where debtor, after being in chapter 11 for nearly seven months, had failed to file a chapter 11 plan and negotiations with its primary creditor constituencies had broken down); *Curry Corp.*, 148 B.R. at 755-56 (declining to extend exclusivity periods where there had been no persuasive testimony as to why a plan of reorganization plan could not have been promulgated during the 120-day exclusive period and debtor had not demonstrated that a plan of reorganization would be forthcoming); *S.W. Oil Co.*, 84 B.R. at 451-53 (denying request for an extension of exclusive periods where, after nearly eight months in chapter 11, the debtor had taken no steps to formulate a plan of reorganization); *In re Century Inv. Fund VII Ltd.*, 96 B.R. 884, 892 (Bankr. E.D. Wisc. 1989) (declining to grant extension of debtor's exclusive periods where, at the time of the hearing on the motion, the debtor had no outline of a plan proposal and, two months after the hearing, had still yet to file a chapter 11 plan).

39. Furthermore, throughout the course of their dealings with the Abax Petitioners, the Debtor's management has routinely ignored its responsibilities to creditors and other constituents in favor of its on-shore Chinese affiliates and there is no reason to believe that this course of conduct will change. Courts have previously held that a loss in confidence or faith in the debtor's management should be considered in determining whether to extend a debtor's

exclusive period. For example, in *In re All Seasons Indus., Inc.*, 121 B.R. 1002 (Bankr. N.D. Ind. 1990), a bankruptcy court found that one of the reasons that the debtor and its major secured creditors had been unable to find common ground upon which to build a consensual chapter 11 plan was that the creditors had lost faith in the capability and perhaps the integrity of the debtor's management. In declining to extend the debtor's exclusive periods, the court stated:

While the court makes no finding as to whether or not this loss of faith is justified (indeed the nature of the hearing and the evidence presented do not permit the court to determine this question) for purposes of the present motion, it is only necessary to realize that a loss of confidence exists. This is a factor the court should and must consider in its determination.

*Id.* at 1006; *see also R.G. Pharmacy, Inc.*, 374 B.R. at 488 (declining to grant additional extension of exclusive periods where there had been a breakdown in negotiations between the debtor and the objecting creditors and the debtor had not shown that additional extension sought was likely to significantly improve the progress of the case); *In re Tripodi*, Ch. 11 Case No. 04-30793, 2005 WL 2589185, \*2 (Bankr. D. Conn. Oct. 9, 2005) (declining to grant additional extension of exclusive periods where debtor had made progress negotiating with creditors and, in light of, among other things, the positions and continuing acrimony between the debtors and their principal creditors, a consensual plan was nowhere on the horizon).

40. The Debtor has now been under the protection of chapter 11 for over a year and has made little to no progress towards promulgating a viable chapter 11 plan. In light, however, of the recent steps taken by the Debtor, such as the engagement of Ernst & Young and the beginning of discussions with third party suitors, the Abax Petitioners believe that a more limited extension of the Exclusive Periods may be warranted. Accordingly, the Debtor's request for an additional ninety-day extension of the Exclusive Periods should be denied.

**B. The Debtor's Case is Neither Large Nor Sufficiently Complex to Warrant a Further Ninety-Day Extension of the Exclusive Periods**

41. The Debtor asserts in its Motion that a further extension of the Exclusive Periods is justified due to the “cross-border and complex nature” of this case. *See* Sec. Excl. Mot., at ¶ 24. While the existence of operations in China makes this matter somewhat out-of-the ordinary, at most it adds a modicum of complexity to an otherwise modest-sized and uncomplicated chapter 11 case. Indeed, at the November 13 Hearing the Court agreed with this observation stating “This is not rocket science, as the saying goes. This may be an exotic company, Chinese based, and you may have a hostile creditor group, but welcome to bankruptcy. It just so happens that happens in most cases.” Trans. Nov. 13 Hearing, at 30:4-7.

42. Overall, this case is not complex in comparison to most bankruptcies of large-, mid-, or even small-cap debtors. It is the Debtor's own failure to seek solutions to its need to refinance, recapitalize or sell its assets that is creating complexity and delay and this factor, therefore, does not warrant an extension of the Exclusive Periods.

43. Courts have previously stated that it is “clear from the legislative history that Congress intended an extension to be granted only in unusual circumstances, involving very large and complex cases.” *See In re S.W. Oil Co.*, 84 B.R. at 452. This case, however, involves a single debtor holding company with no employees or operations. The Abax Petitioners and the one other noteholder are the Debtor's only major creditor constituency and the Debtor's own Schedules identify a grand total of twenty creditors and zero executory contract or lease counterparties. *See* Schedules, Ex. E-G. Moreover, the central issue to this chapter 11 case – the Debtor's failure to honor its obligations on its Senior Notes – is also not complex or in dispute.

44. Courts have declined to extend the exclusive periods for debtors in similar cases that were determined to be routine or of insufficient size or complexity where the debtor



had few creditors and few or no employees or operations. *See, e.g., R.G. Pharmacy, Inc.*, 374 B.R. at 487-88 (debtor's bankruptcy case was not sufficiently large or complex to justify an extension of the debtor's exclusivity periods where debtor employed 44 people and had few major creditors – the objecting parties and the government – and only one equity holder); *Curry Co.*, 148 B.R. at 755 (holding that case was not complex for purposes of extending exclusivity where financial information on the debtor's operations was readily available and case had not produced numerous or complex proceedings); *Gen. Bearing Corp.*, 136 B.R. at 367 (case with only two secured creditors was not sufficiently complex to justify extension of exclusivity); *All Seasons Indus.*, 121 B.R. at 1006 (declining to grant extension of debtor's exclusive periods where court determined that the number of creditors and claims against the debtor were not extraordinary, case was neither large nor unique, and there was nothing unusual about the nature of the debtor's business or financial problems); *S.W. Oil Co.*, 84 B.R. at 452 (holding that case where objecting creditors were debtors' only primary creditors was neither unusually large nor unusually complex and, therefore, extension of debtors' exclusive periods was not warranted); *In re Gagel & Gagel*, 24 B.R. 674, 675 (Bankr. D. Conn. 1982) (declining to grant extension of debtor's exclusive periods where there were only two creditors and extension of exclusive period would be "fruitless.>").

45. This case stands in stark contrast to *In re Borders Group, Inc.*, 460 B.R. 818 (Bankr. S.D.N.Y. 2011), a chapter 11 case that this Court found to be sufficiently large and complex to warrant an extension of the debtors' exclusive periods. In a decision holding that the debtors in that case had established good cause for an extension of the exclusivity periods, this Court took note of the significant evidence set forth by the debtors regarding the size and complexity of the cases. In addition to the nearly 11,000 employees, the Court also noted that

there had been nearly 1,000 docket entries as of the time of the debtors' extension request and that numerous motions and stipulations had been heard or presented – all of which, collectively, illustrated the complexities of the debtors' cases and warranted the extension of exclusivity. *Id.* at 823-24.

46. Unlike the *Borders* case, this Debtor's case is small and straightforward. As set forth above, this case involves but a single debtor with no employees or operations and only one major creditor constituency. Furthermore, there has been little activity to date. The Debtor has not had the need for any typical "first day" relief and, other than the approval of the SEC settlement, three professional retention applications, and a routine motion to establish a bar date, has not filed any requests for relief from the Court except for motions to extend various procedural deadlines. In fact, as of the date of this Objection, there have been fewer than 120 total filings in the Debtor's case, many of which were filed by the Abax Petitioners – a far cry from the high level of activity and the 1,000+ docket entries noted by this Court in *Borders*.

47. By any measure, the size of this case pales in comparison to chapter 11 cases routinely filed in the Southern District of New York where extensions of exclusivity have been granted due to size and complexity. *See, e.g., In re Lehman Brothers Holdings Inc.*, Ch. 11 Case No. 08–13555 (Bankr. S.D.N.Y. 2008); *In re WorldCom, Inc.*, Ch. 11 Case No. 02–13533 (Bankr. S.D.N.Y. 2002); *In re Enron Corp.*, Ch. 11 Case No. 01–16034 (Bankr. S.D.N.Y. 2001); *In re Gen. Growth Props., Inc.*, Ch. 11 Case No. 09–11977 (Bankr. S.D.N.Y. 2009); *In re BGI Inc., f/k/a Borders Group Inc.*, Ch. 11 Case No. 11-10614 (MG) (Bankr. S.D.N.Y. 2011); *In re AMR Corp.*, Ch. 11 Case No. 11–15463 (Bankr. S.D.N.Y. 2012).

48. Neither the size nor complexity of this chapter 11 case warrants a further ninety-day extension of the Exclusive Periods.

**C. The Debtor Is Seeking A Further Ninety-Day Extension of the Exclusive Periods as a Means of Extracting Value and Pressuring the Abax Petitioners to Accept Less Than They Are Entitled to on Account of the Senior Notes**

49. Although the Debtor asserts in its motion that its requested extension is necessary to attract and identify interested parties willing to invest in the Debtor, the Debtor offers no evidence that it will use an additional three months of exclusivity to do anything other than continue its policy of disengagement and delay in hopes that, by preserving the status quo, the Abax Petitioners will eventually succumb and accept less value than they are entitled to for their Senior Notes and Warrants. This tactic of exerting undue pressure to force the Abax Petitioners to accept an unreasonable settlement is improper and, therefore, a further ninety-day extension of the Exclusive Periods should not be granted.

50. Courts have previously held that an extension of exclusive periods should not be employed as a “tactical device to put pressure on creditors to yield to a plan that they might consider unsatisfactory.” *Curry Co.*, 148 B.R. at 754. As one bankruptcy court stated:

The Court should also determine or attempt to determine the debtor’s motives in requesting an extension under § 1221(d) even where the debtor sustains its burden of proof. A debtor may not employ an extension as a tactical device to put pressure on parties in interest to yield to a plan they consider unsatisfactory...Debtors may not use an extension to drag out the reorganization and pressure the creditor for concession in the status of its rights.

*S.W. Oil Co.*, 84 B.R. at 453; *see also In re Grossinger’s Assoc.*, 116 B.R. 34, 36 (Bankr.

S.D.N.Y. 1990) (“[R]equests for extensions of the exclusivity periods should not be granted

routinely or as a matter of course without proof as to probable success in formulating a plan of reorganization and evidence that the debtor did not seek the additional extension in order to

pressure the creditors to accede to the debtor’s reorganization demands.”); *Gen. Bearing Corp.*,

136 B.R. at 36 (“In considering a motion to extend exclusivity, the court must be mindful that the

debtor should not be permitted to use the extension as a way to pressure the secured claimants to accede to the debtor's proposals."). Furthermore, extensions are "impermissible if they are for the purpose of allowing the debtor to prolong reorganization while pressuring a creditor to accede to its point of view on an issue in dispute." *In re Lake in the Woods*, 10 B.R. 338, 345-46 (Bankr. E.D. Mich. 1981).

51. The Abax Petitioners are concerned that the Debtor's management will continue to employ a tactic of delay and indifference as a means of forcing the Abax Petitioners to accept less than they are entitled to on account of their Senior Notes. Furthermore, the longer the Debtor is permitted to maintain the status quo and prevent the chapter 11 case from progressing, the greater the risk to creditors that revenues being generated by the Debtor's operations in China (i.e. the VIE) will be improperly withdrawn from the company – revenues that the Debtor's management have wrongfully withheld from the WFOE that could have been used to pay down the Debtor's obligations.

52. The Debtor should not be rewarded for its unreasonable delay and, accordingly, the Debtor should not be granted a further ninety-day extension of the Exclusive Periods. In contrast, a brief extension of the Exclusive Periods will provide the Debtor with the opportunity to demonstrate to the Court and other parties in interest that meaningful progress is possible.

**D. The Legislative History and Congressional Policy  
Underlying Section 1121 Do Not Support a Further  
Ninety-Day Extension of the Exclusive Periods**

53. The legislative history and Congressional policy underlying section 1121 do not support a further ninety-day extension of the Debtor's Exclusive Periods as the Debtor and this chapter 11 case would not be harmed by a termination of exclusivity.

54. Courts have previously stated that “[i]n passing upon a request for a change in the debtor’s exclusivity period, the court needs to consider more than just the articulated cause presented to it. It must also consider the history and purpose of § 1121 and the competing interests which Congress sought to balance when it enacted these time tables.” *All Seasons Indus.*, 121 B.R. at 1004; *S.W. Oil Co.*, 84 B.R. at 450 (“Courts considering the question of whether to extend the exclusivity period have not favored extension of the 120-day period, a position supported by the legislative history.”). Courts have often cited to the legislative history of section 1121, which indicates that the Bankruptcy Code imposed limitations on a debtor’s exclusive right to file a chapter 11 plan in order to “balance the bargaining positions of debtors and creditors in negotiating the terms of a reorganization.” *R.G. Pharmacy, Inc.*, 374 B.R. at 488; *Grossinger’s Assoc.*, 116 B.R. at 36 (The goal reflected in section 1121 in allowing other interested parties to file a plan of reorganization after the expiration of the debtor’s exclusivity is “predicated on the theory that there should be a relative balance of negotiating strength between the debtors and creditors during the reorganization process.”); *Lake in the Woods*, 10 B.R. at 343 (“The desire to allow other interested parties to file a plan was grounded in the philosophy that there should be a relative balance of negotiating strength between debtors and creditors during reorganization of an enterprise.”).

55. Furthermore, “Section 1121 was designed, and should be faithfully interpreted, to limit the delay that makes creditors the hostages of Chapter 11 debtors.” *In re Timbers of Inwood Forest Associates, Ltd.*, 808 F.2d 363, 372 (5th Cir. 1987), *aff’d sub nom. United Sav. Ass’n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988); *In re Borders Group, Inc.*, 121 B.R. at 1004 (“The bankruptcy courts must avoid reinstituting the

imbalance between the debtor and its creditors that characterized proceedings under the old Chapter XI.”).

56. Consistent with the legislative history and Congressional policy underlying section 1121 of the Bankruptcy Code, declining to extend the Debtor’s Exclusive Periods by ninety days will not result in any harm to the Debtor; rather, it will simply restore balance to the Debtor’s chapter 11 case, placing creditors on equal footing with the Debtor. The Debtor will still be able to pursue a third party transaction and the Abax Petitioners have no intention at this time of disrupting this process. Moreover, the Debtor will still be permitted to file its own chapter 11 plan and have the opportunity to demonstrate its good faith in working with its creditors and other parties in interest to maximize value. Furthermore, a termination of exclusivity after a brief extension will not result in a default in any DIP financing or otherwise adversely affect the Debtor’s financing or liquidity.

**E. A More Limited Extension of the Exclusive Periods is Appropriate to Insure that the Debtor Aggressively Pursues Third Party Transactions**

57. As set forth above, the Abax Petitioners do not believe that the Debtor has demonstrated sufficient progress to warrant a further ninety-day extension of the Exclusive Periods. However, the Abax Petitioners are pleased that the Debtor has received some recent indications of interest and the Abax Petitioners are willing to give Ernst & Young and the Debtor’s management a chance to demonstrate that they are serious about pursuing a transaction that maximizes value for the estate and its creditors. The concern, however, is that should the Court grant the Debtor’s requested extension, ninety days will pass without the Debtor pursuing these transactions, and the parties will have wasted even more time putting creditor recoveries at even further risk.

58. Based on the Debtor's lack of progress thus far, it is imperative that the Debtor and its management be kept on a tight schedule to insure that they do not waste this opportunity. Accordingly, the Abax Petitioners believe that a limited extension of exclusivity, such as 45- or 60-days, would be more appropriate to insure that the Debtor's management actively engages interested parties in hopes of achieving a transaction that maximizes value for the estate and all parties in interest.

### **Conclusion**

59. For the reasons set forth above, the Abax Petitioners respectfully request that the Court deny the Second Exclusivity Motion and, in the alternative, grant a more limited extension of the Exclusive Periods as set forth herein.

Dated: February 18, 2014  
New York, New York

/s/ Jacqueline Marcus  
\_\_\_\_\_  
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*Attorneys for Petitioners Abax Lotus Ltd.  
and Abax Nai Xin Ltd.*

**EXHIBIT A**

**NOVEMBER 13 HEARING TRANSCRIPT**



**In Re:**  
*CHINA NATURAL GAS, INC.*  
*Case No. 13-10419-jmp*

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*November 13, 2013*

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 13-10419-jmp

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In the Matter of:

CHINA NATURAL GAS, INC.,

Debtor.

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United States Bankruptcy Court

One Bowling Green

New York, New York

November 13, 2013

10:42 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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Application Filed by Debtor for Entry of Order Establishing  
Deadlines and Procedures for Filing Proofs of Claim and  
Approving Form and Manner of Notice Thereof

Motion Filed by Debtor and Debtor-in-Possession for Entry of an  
Order Extending its Exclusive Periods to File a Chapter 11 Plan  
and Solicit Acceptances Thereof

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1 P R O C E E D I N G S

2 THE COURT: China Natural Gas.

3 MR. DELUCIA: Good afternoon, Your Honor. Louis

4 DeLucia of Schiff Hardin for debtor, China Natural Gas. And

5 with me, Your Honor, is the CRO, Mr. Greg Pritchard (ph.).

6 Today, Your Honor, we have two matters pending, which

7 the Court has before it.

8 One is an uncontested bar date motion seeking entry of

9 an order setting a bar date of --

10 THE COURT: Do you wish to enter your appearance; is

11 that why you're standing?

12 MR. DELUCIA: Oh, I apologize.

13 MR. STROCHAK: Yeah, I would like to -- an appearance,

14 Your Honor.

15 MR. DELUCIA: I apologize, Your Honor.

16 MR. STROCHAK: Thank you, Your Honor. Adam Strochak

17 and Matthew Goren, Weil, Gotshal & Manges for the Abax

18 creditors.

19 THE COURT: Okay.

20 MR. STROCHAK: Thank you.

21 MR. DELUCIA: Thank you, Your Honor, I apologize.

22 So January 6th is the requested extension -- or

23 requested date set for the bar, date for the filing of proof of

24 claims. There's been no opposition. We have submitted a form

25 of proof of claim. We propose publication in both the USA

1 Today and Wall Street Journal publications, twenty-eight days  
2 prior to the bar date, which is a proposed January 6th date.

3 There's been no opposition, Your Honor; therefore, on  
4 that motion, if the Court has any questions, we would ask that  
5 it be entered.

6 THE COURT: No questions; it's approved.

7 MR. DELUCIA: Thank you, Your Honor.

8 The second and perhaps more substantive motion is a  
9 request for an extension of the debtor's exclusive period  
10 within which to file a plan and solicit acceptances.

11 This is the debtor's first application in accordance  
12 with Section 1121 of the Bankruptcy Code. The only objector  
13 and response that we received of any kind is from Abax, the  
14 Abax entities, which are two entities controlled by Don Yang, a  
15 former director of the debtors.

16 We -- the debtor is seeking a ninety-day extension  
17 through and until February 4th, 2014 to file a plan and to  
18 solicit acceptances until April 7th, 2014. That application is  
19 supported, as Your Honor is aware, by declaration of Greg  
20 Pritchard. And there are exhibits affixed thereto that Your  
21 Honor yesterday graciously granted the submission under seal of  
22 those documents. In accordance with the confidentiality  
23 agreement that we have with Abax and the Abax partners  
24 entities, we have shared those exhibits with the Abax entities  
25 and they now have them, some of those exhibits -- actually one

1 of which they were aware of even before they were filed, Your  
2 Honor, pursuant to the agreement.

3 As the declaration demonstrates, and as the  
4 application demonstrates, the debtor has not sat idly by doing  
5 nothing, using time to exert leverage on the Abax entities. In  
6 fact, this debtor has been working with Mr. Pritchard, as well  
7 as the representatives in China, to formulate a plan that would  
8 be a basis that would be acceptable and perhaps one hundred  
9 percent compliant with 1129 as soon as possible.

10 In order to do that, Your Honor, it has been candidly  
11 an effort of educating principally executives and officers of a  
12 PRC-controlled company that the laws of the United States, the  
13 process of the United States, the laws governing bankruptcy  
14 restructuring, and that process has taken some time. But we  
15 have made substantial progress.

16 To do so, Your Honor, we have made offers -- not one,  
17 but two, at least, written offers to Abax, one of which was an  
18 actual term sheet with terms by which we could, perhaps, obtain  
19 their consent for a consensual restructuring by Abax. But that  
20 offer has not been accepted, and we have sought from them their  
21 support for a plan; it has not been forthcoming.

22 However, we do believe that based upon the progress  
23 we've made with this -- with the debtor, with Abax, that with  
24 an additional period of time we should be able to cross that  
25 hurdle and get to a confirmable plan within this ninety-day



1 period.

2 Let me briefly state what perhaps is unique to this  
3 case that has caused an extension request. One is that it was  
4 commenced as an involuntary, and it has taken some time for the  
5 professionals who were not pre-petition on board consulting  
6 with the debtor on restructuring to do so post-involuntary  
7 filing.

8 Thereafter, Your Honor, the debtor has also had to  
9 deal with -- during that gap period -- the SEC litigation which  
10 it did settle in the gap period, and also has, in fact, teed up  
11 immediately after the order for relief was entered and sought  
12 the approval of that settlement.

13 There are two pending litigations by class action as  
14 well as a derivative action in Delaware, both referenced in the  
15 declaration. Shearman & Sterling have been working on  
16 resolving those litigations. Those litigations include claims  
17 against the officers and directors, and it is the intent to try  
18 to bring those matters into resolution within a plan as well.  
19 That has been discussed by myself, personally, with Shearman &  
20 Sterling as well as with the insurers directly -- counsel to  
21 the insurers directly.

22 That leaves us with really an effort to structure a  
23 simple plan that would resolve, and we provided the Court  
24 with -- under seal -- a proposed plan that would be in  
25 generality a structure that we have obtained approval from the

1 company's principals in China that would be supported by them.  
2 And that plan process, if we take it and refine it, try to  
3 bring Abax into the fold, get us to a confirmation date, you're  
4 looking at a very tight period for this ninety-day period.

5 I did some quick math; if you look at this ninety-day  
6 period, it's November 13th, we have a very limited amount of  
7 time of November left. We have a January 6th bar date, now  
8 that that has been entered. It leaves us very little time from  
9 January 6th to the extended period of February 4th we're asking  
10 for to assess the true world of creditors that exist, based  
11 upon those claims that were filed. And we have two -- at least  
12 two, and if not more, intervening holidays, the major holidays  
13 as well as the New Years. And these reflect some delays as  
14 well. So if you really look at it, we probably have less than  
15 sixty days of working time to get this plan resolved despite  
16 the ninety-day extension. So with that, Your Honor, I do  
17 believe progress has been made.

18 You have heard from -- I will just address quickly the  
19 only objection. We have no objection from the securities  
20 plaintiffs, nothing from the U.S. Trustee, nothing from any  
21 other creditor, and there are other creditors with more than a  
22 million dollars each in claims against this estate. So we have  
23 no other objection.

24 That Abax objection, Your Honor, is -- I consider it  
25 pretty much as expected. You're taking too long to get to a

1 plan, you're being -- delaying the process in order to extract  
2 something from us, all of which, as Your Honor can see, based  
3 upon what we've proposed, based upon an offer that the company  
4 has received and tomorrow morning at 9 a.m. I have a call with  
5 those parties in China to discuss, is not delaying the process.  
6 The debtor is affirmatively looking at these options as a way  
7 that may, in fact, give the maximum possible amount under the  
8 Bankruptcy Code a creditor may seek. And here, Your Honor,  
9 there is very little this debtor could do more than to act in  
10 good faith, pursue the course it's on and seek a confirmation  
11 within the next ninety days.

12 THE COURT: Okay. Let me ask you a question. I don't  
13 mean to mischaracterize the Abax objection, and if I do,  
14 counsel will correct me, but it's basically it's taking too  
15 long, we're impatient and the extension of exclusivity is going  
16 to be used to our detriment.

17 MR. DELUCIA: Right.

18 THE COURT: One question that I have, without going to  
19 the substance of negotiations that have occurred to date  
20 relates to what I understood to have been a proposed meeting in  
21 Hong Kong --

22 MR. DELUCIA: Yeah.

23 THE COURT: -- sometime between the last time we were  
24 together and today, in which parties were supposed to be  
25 talking about settlement and compromise of these issues. Did

1 that meeting take place?

2 MR. DELUCIA: No. What happened was we did exchange  
3 offers, offers that included actual concrete numbers, offers of  
4 participation in equity upon emergence with Abax, but because  
5 there wasn't any counteroffer that suggested a willingness to  
6 compromise in any way, there was no sense that there would be  
7 progress of the expense and time to meet in Hong Kong to make  
8 that happen.

9 In addition, Your Honor, we have been hoping -- and  
10 Your Honor will see within the plan -- that there was an effort  
11 to obtain additional financial advisors in the United States to  
12 facilitate that process, including the process that's  
13 envisioned by the plan. I would elaborate but we're on the  
14 open record. That process and those professionals we've  
15 discussed with Abax, we want them on board to facilitate that  
16 process, and without them on board, I think it would be less  
17 productive. We want them on board at a meeting with Abax if  
18 that can occur. And we're more than anxious to have that  
19 happen within the next ninety days.

20 What we get back from Abax -- and Abax is here; they  
21 can defend themselves -- is that's just not good enough, we  
22 don't understand why you don't just pay us in full, every  
23 single time. And all -- we understand that.

24 Now, if Your Honor has had the opportunity, I know  
25 you've been busy, to look at what we filed yesterday, Your

1 Honor will see that if what they want is what they want, then  
2 that is the way to get it. And if there's no other way to get  
3 them what they want, except perhaps to a plan that we're  
4 proposing, it's the only way to bring the constituencies  
5 together. We've done what we can with that.

6 But we're not -- we're going to continue. The call  
7 that we have tomorrow morning with this interested party is one  
8 that we've advised them last week, Abax, that we would include  
9 them in the process. We are having our first phone calls with  
10 them tomorrow that are substantive phone calls. Thereafter,  
11 Abax will be folded into that process to participate in  
12 understanding what others may be interested in doing with this  
13 debtor.

14 THE COURT: Okay.

15 MR. DELUCIA: Thank you, Your Honor.

16 MR. STROCHAK: Good morning, Your Honor. Adam  
17 Strochak, Weil, Gotshal & Manges, for Abax.

18 Let me start with a couple of things. First of all,  
19 Abax holds something like ninety-five percent of the debt in  
20 this case. So it shouldn't come as a huge surprise to anyone  
21 that we're here arguing our position, because we have, by far,  
22 the most at stake in this matter.

23 What you really have before Your Honor is a  
24 retroactive motion to reinstate exclusivity. By my  
25 calculation, exclusivity ran in the beginning of November, and

1 I don't know that any bridge order was entered. But even apart  
2 from that technical issue, exclusivity should not be extended  
3 on the merits here. There is no cause in this case to extend  
4 exclusivity.

5 THE COURT: Let me ask you a very basic question  
6 because I've read your papers, and if you think I've  
7 mischaracterize what they're, saying you can tell me, but I  
8 think I have the essence of your argument.

9 Assume for a moment that you have a spectacularly  
10 successful argument and you convince me that exclusivity should  
11 not be extended in this case -- which is, by the way, a very  
12 difficult argument for you to win on the first request,  
13 particularly in a situation in which your clients threw this  
14 debtor into bankruptcy through an involuntary, so you end up  
15 getting the consequences of the debtor in bankruptcy. You  
16 don't necessary get what you want, you get what happens in  
17 bankruptcy, which is sometimes what you don't want. So let's  
18 assume for a moment that you get what you want, and I say, very  
19 persuasive argument you win; then what do you do?

20 MR. STROCHAK: Your Honor, the reason why --

21 THE COURT: Do you have a plan on the table?

22 MR. STROCHAK: No, we don't have a plan on the table,  
23 Your Honor, because we couldn't go out and put together a plan  
24 that would work while the debtor still had exclusivity.

25 So what we would like to be able to do is to go

1 forward and talk to prospective purchasers of these assets, to  
2 talk to people who might be interested in recapitalizing this  
3 debtor, and trying to put together a structure for a  
4 recapitalization or a sale of the debtor that would work to get  
5 creditors paid, maybe get a return to equity if there's enough  
6 value for that, and resolve this matter.

7 THE COURT: Okay.

8 MR. STROCHAK: And then --

9 THE COURT: I understand what you just said, but I  
10 also understand that in other settings where debtors have  
11 exclusivity and where there is a level of cooperation between  
12 creditors and debtors or trustees, as the case may be, that  
13 what you've just described is permissible; it happens all the  
14 time. Parties work collaboratively, opportunities are  
15 presented to creditors' committees that are vetted within the  
16 committee and then presented to the debtors for consideration.  
17 This is standard practice. In what way does the extension of  
18 exclusivity preclude what you've just described?

19 MR. STROCHAK: I think what it does, Your Honor, is it  
20 continues to leave the case in the control of the debtor, and  
21 it gives them the ability to simply continue to say no, and to  
22 continue to simply hold us at arm's length. Because the only  
23 way to get the maximum value for this estate is to have the  
24 full cooperation, either voluntarily or involuntarily, from the  
25 management in China, because no one is going to come in and

1 offer the value that this estate is worth if the Chinese  
2 management and the owners of the -- the equity owners of the  
3 VIE entities, the operating companies in China, are just going  
4 to stand back and say we're not going to cooperate, we're not  
5 going to do anything.

6 So what we're looking for is the opportunity to go out  
7 and put something together that will work and put that before  
8 this Court, and frankly, put the debtor in a situation where  
9 the debtor's management, as fiduciaries to the creditors of  
10 this estate, are going to have to say no, we won't do that  
11 deal, and we won't seek the cooperation that we need in China  
12 to make that deal happen, because we don't think it's the best  
13 deal for this estate. And we don't think that they're ever  
14 going to do that until we can go out and actually put something  
15 together and put it before them and say here, this is a good  
16 deal and you have a fiduciary duty to make this deal happen in  
17 order to ensure a maximum return for the creditors of this  
18 estate.

19 And the draft plan that they've put before Your Honor  
20 late last night, which we got first thing this morning after  
21 asking for a copy of it, is Exhibit A as to why you should give  
22 us that opportunity and allow us to go out and try and put  
23 something together; that we can go out to people in the market  
24 and say look, we have the right to propose a plan, you can deal  
25 with us because we're going to try and get this confirmed even



1 if we can't get full cooperation from the debtor on the first  
2 round.

3 And the plan that they've put forward is a liquidating  
4 plan -- it's, essentially, the plan of last resort. It's what  
5 you would do in this case if you've explored every avenue to  
6 achieve maximum value and concluded you can't make anything  
7 happen. So you throw up your hands, you hand these keys to the  
8 estate to a trustee and say you know what, you go and sell it,  
9 you're not going to have any cooperation from the Chinese  
10 management, you're going to get minimal value for it. And then  
11 if you read it carefully, Your Honor, they've done a really  
12 cute thing. They've separately --

13 MR. DELUCIA: I have to object, Your Honor; that  
14 document was filed under seal, and counsel is now putting on  
15 the record -- and it was submitted under a confidentiality  
16 agreement signed by Abax and Mr. Strochak, and he's now  
17 discussing terms of --

18 THE COURT: Well, I haven't heard any terms yet, but I  
19 think that -- I view that interruption as an admonition to be  
20 careful what you're about to say.

21 MR. STROCHAK: Well, Your Honor, I don't -- I guess if  
22 they're asserting that plan as evidence in support of an  
23 extension of exclusivity, then I'm not quite sure how I can  
24 oppose it without talking about it to some degree. And I can  
25 try and dance around the line, I don't know what Mr. -- what

1 counsel thinks is and isn't confidential in that plan, but I  
2 think suffice it to say it is the plan of last resort, it is  
3 the cramdown plan which they would have to get confirmed over  
4 our objection as the creditors holding, you know, at least  
5 ninety-five percent of the debt in this case. So it's the plan  
6 of last resort.

7 So what they're telling Your Honor is we'd like ninety  
8 more days. If the ninety days don't work, we have a plan; it's  
9 the disaster scenario because it's going to have to be approved  
10 in a cramdown situation, we're certainly not going to support  
11 it, and that's what they're telling Your Honor.

12 So what we think is going to happen is they're going  
13 to keep us at arm's length, they're going to run the clock out,  
14 they're going to say we'd like to keep as much value as we can  
15 for the Chinese equity owners of the VIE interests and the  
16 Chinese management. And we'll run the clock out and then in  
17 February we'll propose a cramdown plan and we'll see what  
18 happens then.

19 So we're not looking at a situation where we  
20 realistically are going to get to a resolution of this matter  
21 in February; we're looking at the beginning of an extended  
22 litigation in February. And that's what they're putting  
23 forward.

24 I have to make a few comments about some of the things  
25 that were communicated, Your Honor, because some of it is just

1 wrong.

2 I certainly understand, Your Honor -- we commenced  
3 this as an involuntary because we thought that this forum would  
4 be the best place to get this matter resolved. It wasn't a  
5 precipitous filing where we surprised anybody; we told them for  
6 six months, let's get it resolved or we're going to have to  
7 file an involuntary or take other enforcement actions.

8 Counsel has been involved since the involuntary was  
9 filed in February. This isn't a situation where they got  
10 involved at the last minute. Counsel's partner in Washington  
11 has represented the debtor for a long time, was counsel before  
12 the involuntary, so it's not like this was done by surprise in  
13 the dark of night or anything like that; this has been coming  
14 for a long time. And it only came as a result of our  
15 frustrations in inability to get this resolved.

16 It is correct that the debtor made a -- what they call  
17 a proposal to us. They came many, many months into this case.  
18 It was categorically unworkable in a number of different ways.  
19 And again, I won't get into the details due to the  
20 confidentiality concerns, but it didn't work in terms of the  
21 amount they're proposing to pay us, it didn't work in terms of  
22 the structure, it wasn't supported by any justification, saying  
23 here's why we think this amount of value is what you're  
24 entitled to get in this case. It was supported by nothing.

25 It's categorically untrue that we didn't respond. We

1 responded within a week. We responded within a week that said  
2 look, you seem to be proposing an acquisition by the founder in  
3 China, and if that's what you're proposing, we could work with  
4 that. Here's what we would need to make it happen. And we  
5 ticked off the things that we would need to make it happen. We  
6 explained to them why we thought that their proposal was  
7 unworkable and unsupported. And we said we would actually  
8 consider taking a discount off of the amount we were owed if a  
9 transaction like the one we outlined could be consummated by  
10 the end of the year. So categorically untrue that we have just  
11 stood back and said we want a hundred percent of what we were  
12 owed, we won't take anything less. So that simply is untrue.

13 We have indicated that we are prepared to discuss that  
14 framework with them, and then after our response went back to  
15 them, just in the last week or so, they notified us that they  
16 had, essentially, an over-the-transom offer from somebody that  
17 would pay substantially all of the notes in terms of the value.  
18 And that's just the opening proposal that was made. So we  
19 certainly think that that should be explored.

20 We want to be at the table, where I learned, for the  
21 first time, in court this morning that there's a meeting or a  
22 phone call tomorrow to discuss it. We were not invited to that  
23 process.

24 What's been going on here for many, many months, Your  
25 Honor, is a rope-a-dope. We were told initially that the

1 debtor was simply going to refinance the debt and we'd be  
2 refinanced out. That never happened. We never got any  
3 information suggesting that there ever had been an opportunity  
4 to shop for new financing. Nothing has happened. At every  
5 step the response back we get is well, we're going to have a  
6 call with the people in China and we'll see what happens. So  
7 we simply are being kept at arm's length and essentially  
8 threatened with the idea that look, if you're not going to  
9 accept what we, the Chinese ownership of the operating  
10 entities, is willing to pay for it, then we'll just hand the  
11 keys to the liquidating trustee, and we're not going to  
12 cooperate, and they'll just sell it off for whatever they can  
13 get, and that's where it all will end up.

14           So that's what's going on in this case, Your Honor.  
15 We have not been provided with any information to support any  
16 valuation of the debtor. We've been provided with one  
17 document, a liquidation analysis, for, essentially, a fire sale  
18 value of the assets. Nothing to support any contentions of  
19 valuation. No marketing plans.

20           We've been told that they wanted to get KPMG retained  
21 as a financial advisor to assist with marketing and valuing  
22 this estate. We immediately responded and said yes, we think  
23 that's a good idea. In fact, we told you in the summer that  
24 you needed people on the ground in China to do this. That  
25 suggestion was rejected at first, and now they've come around

1 to that view, so they want to hire KPMG. And we immediately  
2 responded yes, my partner in Hong Kong, she knows the KPMG  
3 team. We'd love to talk to them. That would be good. And  
4 they responded no, they're not ready to talk yet. You can't  
5 reach out to them. Don't do that.

6 So we haven't had any contact with the KPMG people in  
7 China that ostensibly are going to be responsible for this very  
8 short duration now marketing process that they're proposing,  
9 which is not really ninety days. It's really sixty days. We  
10 haven't seen anything about it, and the only conclusion that we  
11 can reach, Your Honor, is that this debtor is simply going to  
12 run the clock, and they're either going to try and force us to  
13 accept whatever the Chinese ownership might be willing to pay,  
14 and if we don't like it, then they'll just try and cram down a  
15 plan on us.

16 And that's not a justification for an extension,  
17 particularly in a case here where there is no harm whatsoever  
18 to the debtor from an extension of exclusivity. This is not a  
19 case where there's going to be dozens of competing --

20 THE COURT: You mean harm from a denial of an  
21 extension?

22 MR. STROCHAK: A denial. I'm sorry, Your Honor.  
23 Thank you for the correction.

24 There's no harm whatsoever. If we can go out and put  
25 something together and if they can come before this Court as

1 fiduciaries to this estate and say Your Honor, that doesn't  
2 work for the following reasons. We don't think it's the most  
3 value. They have that right. They say they want to include us  
4 in the process anyway, so there's no harm to them.

5 This is not a case where there's going to be multiple  
6 competing plans and the debtor is going to be distracted, in  
7 dealing with multiple competing plans, from accomplishing what  
8 needs to be accomplished in Chapter 11. This is a  
9 recapitalization case. It's not an operating debtor where  
10 you've got lots of changes that need to be made and tools of  
11 the Bankruptcy Code used to put the debtor in shape for a sale.

12 This is a well performing enterprise. The financials  
13 demonstrate that. We attached that to our papers. They're  
14 socking away cash. They're investing cash that they're  
15 generating in expanding their business. They've got cash on  
16 the balance sheet. Nobody is here before you saying, Your  
17 Honor, that this is a sick company and we need to fix it; we  
18 need more time to fix it. This is a healthy company, and they  
19 just need to recapitalize it, and we haven't seen anything, and  
20 they haven't put anything before this Court, to demonstrate  
21 that they've taken steps to do that. Nothing. I mean, there's  
22 no marketing plan before the Court. There's no list of  
23 prospects. There's no list of potential sources of capital.  
24 There's no valuation information to assist the Court in  
25 understanding why it might be difficult and they need more time

1 to do it. There's nothing before the Court to justify an  
2 extension in this case.

3 So I'll rest there, Your Honor. Thank you for hearing  
4 me out.

5 THE COURT: Okay.

6 MR. DELUCIA: Limited response, Your Honor.

7 One point I'd like to highlight, which is somewhat  
8 subtle within what you've heard in terms of our argument and  
9 Abax's argument, and that is this: what they want is not to  
10 file a plan but to provide opportunities to -- to provide  
11 potential investors, provide financing, provide opportunities  
12 for cash to come to the debtor to pay themselves off.

13 They commenced this case February 8th of this 2013.  
14 We have not received one communication from them saying can you  
15 speak to this company. Why don't you speak to that investor?  
16 Not one. And they have been all over our back, as you can  
17 tell. So reality is, Judge, if they have somebody interested  
18 in buying, investing in this company, as I indicated and as I  
19 think the documents suggest we filed under seal, we're prepared  
20 to go down that path and explore it. But we haven't even  
21 gotten one suggestion from the Abax parties that there is  
22 someone they know we should speak to. Not one since February  
23 8th. So, Your Honor, the answer is we are --

24 Now, let me talk about going forward. He is right.  
25 We do want to include them in the process. We intend to



1 include them in the process. But this private equity fund,  
2 with whom we have a call tomorrow morning, has the capacity to  
3 do a deal, from what we've checked in the background, but if  
4 their interests are not real, if they have no capacity to close  
5 within a reasonable period of time, there's no point wasting  
6 everybody's time. But if it goes beyond this, Abax will be at  
7 that table.

8 THE COURT: Okay.

9 MR. DELUCIA: And we are prepared to discuss -- and  
10 you just heard, by the way, counsel state, not me, that the  
11 offer that we're discussing tomorrow or the proposal that we're  
12 discussing tomorrow includes a number that would pay out the  
13 notes in full. You heard him say that just now on the record.  
14 So what's the harm of an extension of exclusivity as we explore  
15 that path? If we open the door, it's not just Abax who can  
16 file a plan at that point. It's the other unsecured creditors.  
17 It's a securities claims plaintiff. Any party in interest,  
18 under 1121, can file a plan, at which point, Your Honor, the  
19 door is open to a, perhaps, rogue plan that none of us want to  
20 waste their time on.

21 So exclusivity has a purpose. Congress did it for a  
22 reason. And we are here, Your Honor, to work with this  
23 constituent, and we are not saying, despite the animosity the  
24 Abax and the principals in China have -- there's nothing  
25 between counsel. We're always pleased to work with counsel.

1 But we have a real opportunity to go down a path if we work  
2 together, and I think we can do that, Your Honor.

3 THE COURT: Okay. You said something that was on my  
4 mind before you said it, which is the animosity that seems to  
5 prevail behind the scenes here. And it's not just because this  
6 is a Chinese asset but because sometimes it's very difficult to  
7 divine the difference between appearance and reality in dealing  
8 with Chinese businesses. And I've had other cases before me  
9 that have involved Chinese assets. I can't tell what's going  
10 on, and the papers, candidly, on both sides, are more form than  
11 substance in terms of talking about these issues.

12 To what extent is there a genuine and sincere  
13 opportunity for parties to work collaboratively in the event  
14 that exclusivity is extended? Because the words are being  
15 expressed, but embedded in the Abax opposition is the expressed  
16 concern that exclusivity is being used here as a weapon --  
17 that's the classic terminology -- to disadvantage creditor  
18 interests. I don't necessarily buy that, but it could be true  
19 in this case because of the animosity you just described. So I  
20 don't know who's trying to disadvantage who.

21 MR. DELUCIA: Yes. That's a legitimate question, Your  
22 Honor, and it's probably the undercurrent of whatever distrust  
23 there may be. I will say candidly that there is a sincere  
24 interest, based upon -- as I mentioned, I gave Your Honor a  
25 brief background to it when I stated there has been an

1 education process of hours spent by Mr. Pritchard and myself  
2 educating everybody on the debtor's side on the U.S. bankruptcy  
3 process, duties under that process, opportunities under that  
4 process, and responsibilities under that process. And that  
5 includes the obligation to do what Your Honor is addressing,  
6 which is the good faith negotiation which creditors toward a  
7 plan of reorganization.

8 I believe we crossed that hurdle. I believe they  
9 understand it. We are working with them and their  
10 professionals, which include some law firms in China, the Doqui  
11 (ph.) Law Firm, who have U.S. educated attorneys at that firm,  
12 who have helped bridge that gap.

13 Is it a perfect world between Abax and the debtor?  
14 Absolutely not. Is it one that takes, probably, of every hour  
15 that is spent on the case, a percentage of time that is needed  
16 to make sure that those issues are put to the side and  
17 substance is addressed? Absolutely.

18 And I do believe that we are at a critical point where  
19 the debtor will be turning towards plans and restructuring that  
20 Abax will participate in. They may not like the ultimate plan  
21 that has to be proposed because it's the only workable plan.  
22 And it may, in fact, obtain votes other than theirs, and it may  
23 be confirmable under 1129 despite their negative vote, but  
24 that's plan process. That's the bankruptcy. We do not have to  
25 say that one hundred percent of creditors vote in favor.

1 That's the law.

2 So, Your Honor, we're comfortable with the fact that  
3 we may have to file a plan that Abax doesn't like, but I will  
4 never file a plan that doesn't comply, at least in my  
5 understanding, of 1129.

6 THE COURT: Okay. But that doesn't entirely respond  
7 to my question, although it came close. It gave you an  
8 opportunity to give a little speech at the end.

9 My concern here is that I don't really know what's  
10 going on, because no one's really telling me, even in documents  
11 that are filed under seal. What you're basically saying is we  
12 reserve the right to cram them down, and what they're saying is  
13 we're concerned that exclusivity is being extended so that the  
14 bankruptcy process will be used to our fundamental  
15 disadvantage, and this company hasn't done enough up to this  
16 point to warrant an extension of exclusivity in a case that,  
17 while exotic, is not that complicated. That's my understanding  
18 of the positions.

19 MR. DELUCIA: Sure.

20 THE COURT: Here's what I'm going to do, because I  
21 think I've heard enough and I understand enough about what's  
22 going on at the surface, although not what's going on behind  
23 the scenes.

24 I'm going to extend exclusivity for ninety days. The  
25 burden to get another extension will be almost insurmountable.

1 So this is not a last and final as much as it is a first and  
2 best.

3           Within the first thirty days of the ninety-day period,  
4 I expect the parties to develop what I'm going to term a  
5 protocol of cooperation. There will be an agreed approach to  
6 dealing with transactions to maximize value. What happens in a  
7 plan is one thing; whether there is a transactional  
8 underpinning for a plan is something else altogether. And as  
9 to that transactional underpinning, including the sharing of  
10 necessary financial information to assess plans, the  
11 participation of Abax, through counsel or other advisors, in  
12 transactional conversations, the ability of Abax to engage, all  
13 of that will be, in one form or another, the subject of this  
14 protocol together with such other and additional provisions the  
15 parties consider appropriate to encourage that which is not  
16 presently occurring.

17           If you fail in getting that done within the first  
18 thirty days of this period, I will give Abax, for cause shown,  
19 an ability to present a motion to shorten exclusivity. They'll  
20 have a pretty high burden, too.

21           And with that, I hope that you'll work together  
22 constructively. And I also hope that we don't end up with what  
23 could turn out to be unproductive litigation. A consensual  
24 outcome is desirable.

25           And to the extent that your clients are looking for

1 signals from this Court, I expect them to engage and reach an  
2 agreement, and if they don't, the consequences are not likely  
3 to be desirable.

4 MR. DELUCIA: Right. Absolutely, Your Honor. But one  
5 process I would just raise and then I'll -- you have a crowded  
6 docket; I don't want to take any more of your time -- is giving  
7 that protocol period, that thirty-day period -- obviously, we  
8 can do everything we can in good faith.

9 THE COURT: You can get that done today if you're  
10 doing this in good faith. There's no reason why you can't  
11 reach that agreement today.

12 MR. DELUCIA: Well, I have to -- I can have one  
13 agreement. They may not agree to that agreement, and we can  
14 negotiate. My point is they control, and can control, that  
15 process. They may say, no matter what we throw out to them in  
16 order to cooperate that that's not good enough, because you're  
17 giving them the opportunity to say see, Judge. We never made  
18 an agreement.

19 THE COURT: No, that's not what's going to happen, and  
20 if that's what you think is going to happen, you're missing my  
21 message. My message is to counsel to get this done and not to  
22 make the reason that you don't have a protocol an excuse for  
23 terminating the exclusivity, because I'll see through that and  
24 it won't work.

25 I expect you guys to work together. I expect you guys

1 to treat each other as you would if Abax were running a  
2 creditors' committee and you're running a debtor that needs the  
3 cooperation of the creditors' committee to get a plan done on a  
4 consensual basis. This is not rocket science, as the saying  
5 goes. This may be an exotic company, Chinese based, and you  
6 may have a hostile creditor group, but welcome to bankruptcy.  
7 It just so happens that happens in most cases.

8 MR. DELUCIA: I agree. I agree.

9 THE COURT: So get it done.

10 MR. DELUCIA: I have no problem with that, Your Honor.

11 THE COURT: In fact, get it done this week.

12 MR. DELUCIA: We'll do everything we can.

13 THE COURT: I'd like a status report on it on a  
14 telephone conference one week from today. I expect it to be  
15 done within a week. You have thirty days to get it done; I  
16 expect it to be fully documented within a week. Treat it as a  
17 high priority. Not just the documentation, but the performance  
18 that underlies the documentation, an attitude of true  
19 cooperation and collaboration, and if I don't see that, you're  
20 in trouble.

21 MR. DELUCIA: There's no problem, Your Honor. We're  
22 happy to do it. It's not us. I mean, I'm --

23 THE COURT: No.

24 MR. DELUCIA: I'm only concerned --

25 THE COURT: I think it may be. Not you, but parties

1 that you report to --

2 MR. DELUCIA: Sure.

3 THE COURT: -- who not only may not misunderstand what  
4 goes on in bankruptcy court, but may not understand that there  
5 are adverse consequences that can flow from a lack of  
6 cooperation.

7 So I am emphasizing that I expect parties not just to  
8 go through the motions and nod their head but to actually  
9 perform.

10 MR. DELUCIA: Absolutely, Your Honor.

11 THE COURT: And your clients need to understand that  
12 they're going to be held on a tight leash here and that ninety  
13 days is not an introduction into another ninety days.

14 This is their last opportunity to get this done or I  
15 will open up exclusivity.

16 MR. DELUCIA: That sounds fine, Your Honor. Thank you  
17 very much.

18 THE COURT: Okay.

19 MR. DELUCIA: Thank you.

20 MR. STROCHAK: Your Honor, if I could ask one  
21 indulgence? Hopefully we won't need a call with the Court next  
22 week, but if we do, could we make it Friday instead? I'm going  
23 to be out of the country, and it's just going to be very  
24 difficult for me to get on the phone Thursday.

25 THE COURT: I hope you don't need a call, but if you



1 need a call on Friday, I'll be here.

2 MR. STROCHAK: Thank you so much.

3 MR. DELUCIA: Thank you, Judge.

4 (Whereupon these proceedings were concluded at 11:21 AM)

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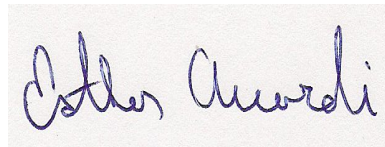
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C E R T I F I C A T I O N

I, Esther Accardi, certify that the foregoing transcript is a true and accurate record of the proceedings.

A handwritten signature in blue ink that reads "Esther Accardi". The signature is written in a cursive style and is centered within a light gray rectangular box.

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ESTHER ACCARDI

AAERT Certified Electronic Transcriber CET\*\*D-485

eScribers

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Date: November 15, 2013

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